Supreme Court of the United States

OCTOBER TERM, 1915

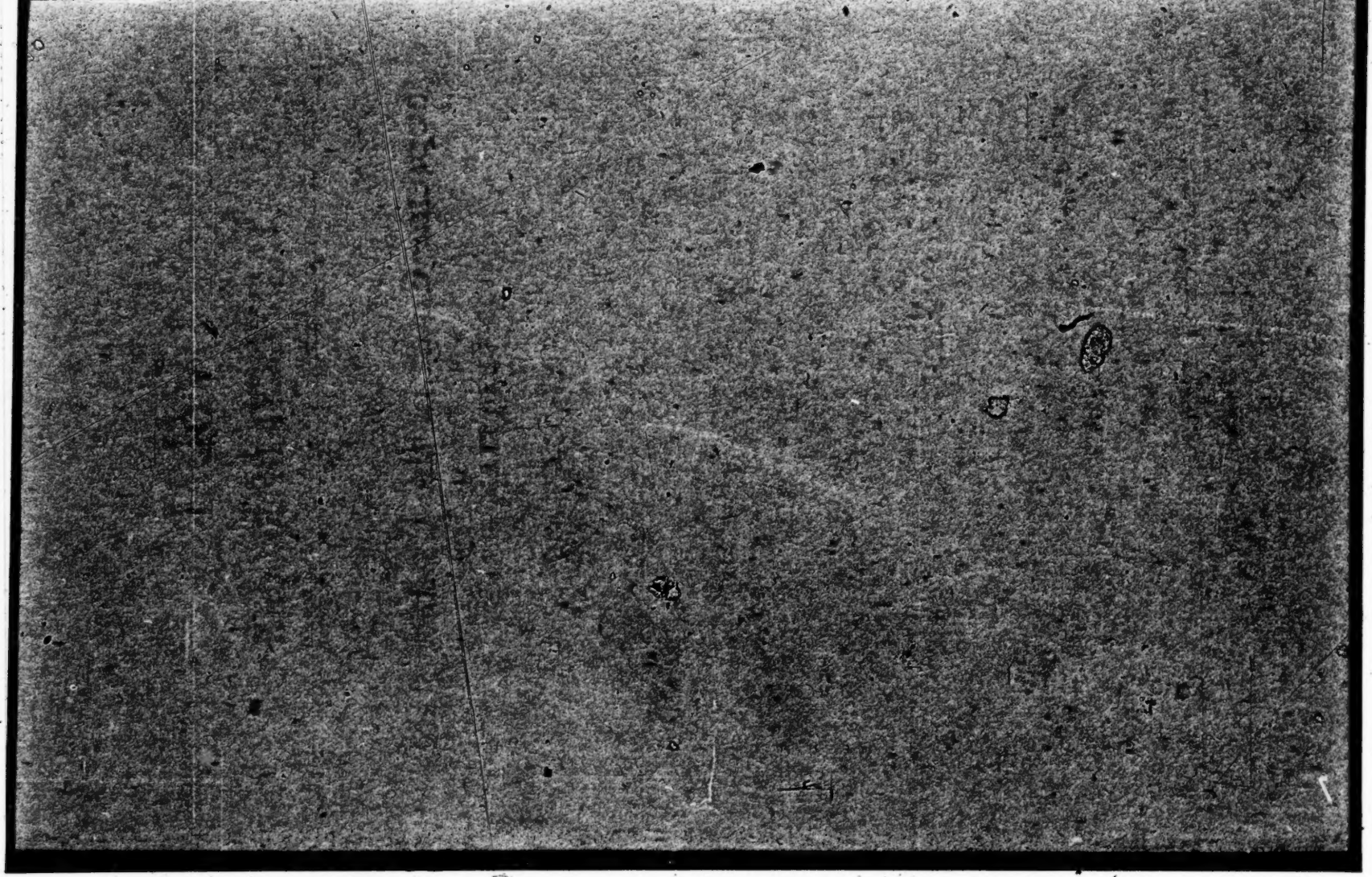
No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, BOARD OF TRADE OF THE CITY OF CHICAGO, AND GARY STEEL COMPANY, APPELLANTS,

vs.

THE UNITED STATES, THE [illegible] RAILROAD COMPANY, [illegible] AND [illegible] RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 787

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO, AND ACME STEEL COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 13507

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (of Indiana), BOARD OF TRADE OF THE CITY OF CHICAGO, and ACME STEEL COMPANY

vs.

UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY et al.

Be it remembered, that the above-entitled action was commenced by the filing of the Bill of Complaint, October 5, 1933, in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division (printed copy filed on this the 14th day of October, 1933).

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

IN EQUITY No. 13507.

Illinois Commerce Commission,
Public Service Commission (of Indiana),
Board of Trade of the City of Chicago,
and
Acme Steel Company,
Plaintiffs,

vs.

United States of America,
The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Chicago Terminal Railroad Company,
The Baltimore and Ohio Railroad Company,
The Belt Railway Company of Chicago,
The Chesapeake and Ohio Railway Company,
Chicago and Calumet River Railroad Company,
Chicago and Eastern Illinois Railway Company, (Charles M. Thomson, Trustee),
Chicago and Erie Railroad Company,
Chicago and Illinois Western Railroad,
Chicago and North Western Railway Company,
Chicago and Western Indiana Railroad Company,
Chicago, Aurora and Elgin Railroad Company, (A. A. Sprague and Britton I. Budd, Receivers),
Chicago, Burlington and Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago Short Line Railway Company,
Chicago, South Shore and South Bend Railroad,
Chicago, West Pullman & Southern Railroad Company,
Elgin, Joliet and Eastern Railway Company,
Grand Trunk Western Railroad Company,
Illinois Central Railroad Company,
Illinois Northern Railway,
Indiana Harbor Belt Railroad Company,
Manufacturers' Junction Railway Company,
The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee),
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Pere Marquette Railway Company,
Pullman Railroad Company,
Wabash Railway Company (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers),
Defendants.

BILL OF COMPLAINT.

BILL OF COMPLAINT.

To the Honorable Judges of the District Court of the United States for the Eastern Division of the Northern District of Illinois, in Chancery sitting:

Illinois Commerce Commission, composed of B. F. Lindheimer, Chairman, Charles E. Byrne and Andrew Olson, citizens of the State of Illinois, is a commission created by an act of the General Assembly of Illinois entitled "An Act Concerning Public Utilities," approved June 29, 1921, as amended, with its office in the Centennial Building, Springfield, Illinois; Public Service Commisison (of Indiana), composed of Perry McCart, Chairman; Moie Cook and Samuel L. Trabue, citizens of the State of Indiana, a commission created, organized and existing under Chapter 93 of the Acts of the General Assembly of the State of Indiana for the year 1933, approved March 2, 1933, with offices in the State Capitol, Indianapolis, Indiana; the Board of Trade of the City of Chicago, a corporation organized and existing under the laws of the State of Illinois, with its principal office at Chicago, Ill., and a citizen of the State of Illinois; Acme Steel Company, a corporation organized and existing under the laws of the State of Illinois, with its principal office at 2840 Archer avenue, Chicago, Illinois, and a citizen of the State of Illinois; present this their bill of complaint against the United States of America, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Chicago Terminal Railroad Company, The Baltimore and Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake and Ohio Railway

Company, Chicago and Calumet River Railroad Company, Chicago and Eastern Illinois Railway Company, (Charles M. Thomson, Trustee), Chicago and Erie Railroad Company, Chicago & Illinois Western Railroad, Chicago and North Western Railway Company, Chicago and Western Indiana Railroad Company, Chicago, Aurora and Elgin Railroad Company, A. A. Sprague and Britton I. Budd, Receivers, Chicago Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Indianapolis and Louisville Railway Company, Chicago Junction Railway, (The Chicago River and Indiana Railroad Company, Lessee), Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Chicago River and Indiana Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Chicago Short Line Railway Company, Chicago, South Shore and South Bend Railroad, Chicago, West Pullman & Southern Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Illinois Northern Railway, Indiana Harbor Belt Railroad Company, Manufacturers' Junction Railway Company, The Michigan Central Railroad Company, (The New York Central Railroad Company, Lessee), Minneapolis, St. Paul & Sault Ste. Marie Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Pere Marquette Railway Company, Pullman Railroad Company, Wabash Railway Company, (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers), and thereupon plaintiffs respectfully say:

I.

Plaintiff, Illinois Commerce Commission, is created by the laws of the State of Illinois and is charged with the duty of administering "An Act Concerning Public Utilities," approved June 29, 1921, as amended, hereinafter referred to as the Illinois Commerce Commission Law. Among other duties the Illinois Commerce Commission is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Illinois, and also has the power to investigate existing or proposed interstate rates where any act in relation thereto shall take place within the State of Illinois, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief therefrom.

Plaintiff, the Public Service Commission (of Indiana) is created by Chapter 93 of the Acts of the General Assembly of the State of Indiana for the year 1933, approved March 2, 1933, hereinafter referred to as Public Service Commission Act. Among other duties the Public Service Commission (of Indiana) is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Indiana, and also has the power to investigate existing or proposed interstate rates, where any act in relation thereto shall take place within the State of Indiana, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief therefrom.

Plaintiff, Board of Trade of the City of Chicago, is a corporation organized and existing under the laws of the State of Illinois, the members of which are engaged in

the purchase, manufacture and sale of grain and grain products.

Plaintiff, Acme Steel Company, is a corporation organized and existing under the laws of the State of Illinois, engaged in the manufacture of steel articles, and joins in this petition on behalf of itself and fifty-seven other corporations, individuals and associations similarly situated, who were parties complainant in Docket 24950 before the Interstate Commerce Commission and all of whom were parties to the proceeding known as Docket 19610, and also on behalf of such other parties as may have a like interest in the subject matter hereof.

All plaintiffs are citizens of their respective states, as above set forth.

II.

The Alton Railroad Company; The Belt Railway Company of Chicago; Chicago and Calumet River Railroad Company; Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee in bankruptcy); Chicago & Illinois Western Railroad; Chicago and Western Indiana Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, lessee); Chicago, West Pullman & Southern Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; and Pullman Railroad Company, are corporations organized and existing under the laws of the State of Illinois, with their respective principal offices and places of business at Chicago, Illinois.

The Atchison, Topeka and Santa Fe Railway Company is a corporation organized and existing under the laws of the State of Kansas, with principal offices and places of business at Topeka, Kansas, and Chicago, Illinois.

The Baltimore and Ohio Chicago Terminal Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its prineipal office and place of business at Baltimore, Maryland.

The Baltimore and Ohio Railroad Company is a corporation organized and existing under the laws of the State of Maryland, with its principal operating office at Baltimore, Maryland.

The Chesapeake and Ohio Railway Company is a corporation organized and existing under the laws of the States of Virginia, West Virginia and Kentucky, with its principal office and place of business at Richmond, Virginia.

Chicago and Erie Railroad Company and Chicago, Indianapolis and Louisville Railway Company are corporations organized and existing under the laws of the State of Indiana, with their respective principal offices and places of business at Chicago, Illinois.

Chicago and North Western Railway Company is a corporation organized and existing under the laws of the States of Illinois, Wisconsin and Michigan, with its principal office and place of business at Chicago, Illinois.

Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, receivers), is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Aurora, Illinois.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Chicago, Illinois.

The Chicago River and Indiana Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place

of business at New York, New York, and Chicago, Illinois.

The Chicago, Rock Island and Pacific Railway Company is a corporation organized and existing under the laws of the States of Illinois and Iowa, with its principal office and place of business at Chicago, Illinois.

Chicago Short Line Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at South Chicago, Illinois.

Chicago, South Shore and South Bend Railroad is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at Michigan City, Indiana.

Elgin, Joliet and Eastern Railway Company is a corporation organized and existing under the laws of the States of Indiana and Illinois, with its principal office and place of business at Chicago, Illinois.

Grand Trunk Western Railroad Company is a corporation organized and existing under the laws of the States of Michigan and Indiana, with its principal office and place of business at Detroit, Michigan.

Indiana Harbor Belt Railroad Company is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at New York, N. Y.

Manufacturers' Junction Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Cicero, Illinois.

The Michigan Central Railroad Company (The New York Central Railroad Company, lessee) and Pere Marquette Railway Company, are corporations organized and

existing under the laws of the State of Michigan, with their respective principal offices and places of business at Detroit, Michigan.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation organized and existing under the laws of the States of Michigan, Wisconsin and Minnesota, with its principal office and place of business at Minneapolis, Minnesota.

The New York Central Railroad Company is a consolidated corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, with its principal office and place of business at Albany, New York, and New York, New York.

The New York, Chicago and St. Louis Railroad Company is a corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana and Illinois, with its principal office and place of business at Cleveland, Ohio.

The Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal operating office at Philadelphia, Pa.

Wabash Railway Company is a corporation organized and existing under the laws of the State of Indiana, with its principal operating office at St. Louis, Missouri. Walter S. Franklin and Frank C. Nicodemus, Jr., are receivers of this property under order of the District Court of the United States for Eastern District of Missouri.

All the defendants above named are corporations, citizens of the states of their incorporation, owning and operating lines of railroad within the Chicago switching district in the State of Indiana and/or in the State of Illinois, and as such are engaged in the interstate trans-

portation of property subject to the provisions of the Interstate Commerce Act, and as their lines of railroad may lie are also engaged in the intrastate transportation of property within the State of Indiana and/or within the State of Illinois and as such are subject to the laws of the State of Indiana and of the laws of the State of Illinois appertaining thereto. The individuals above named are trustees and receivers, operating the lines of railroad under order of the District Courts of the United States and as such are suable under the provisions of the Interstate Commerce Act and related acts.

III.

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiency Appropriations Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission entered July 3, 1933, in its Docket 19610, *Switching Rates in the Chicago Switching District*, 195 I. C. C. 89, and to enjoin and restrain the defendants, other than the United States of America, from publishing, demanding, charging, collecting and/or receiving rates alleged to be authorized by the said order of the Interstate Commerce Commission or in any wise to alter, change, cancel or in any manner depart from the rates for switching service set forth in tariffs on file with the Illinois Commerce Commission for intrastate switching between points in the Chicago switching district in the State of Illinois, and/or on file with the Public Service Commission (of Indiana) for intrastate switching between points in the Chicago switching district in the State of Indiana, or to make any effort to modify or change said intrastate switching rates in order to comply with the requirements

of the said order, as more fully hereinafter set forth; and to set aside and hold for nought any and all acts of said defendants, or any of them, performed and done under or in alleged conformity with said order of the Interstate Commerce Commission, dated July 3, 1933.

IV.

The Interstate Commerce Commission, on May 11, 1927, instituted a proceeding of inquiry and investigation into and concerning the lawfulness of rates and charges for switching, within the Chicago switching district, all carload traffic moving in interstate commerce. Extensive hearings were held and on July 31, 1931, a report and order of the said Interstate Commerce Commission was entered (177 I. C. C. 669), a copy of which report and order is attached hereto marked "Appendix A" and is made a part hereof as fully as though set forth herein.

In said report and order the Interstate Commerce Commission approved, as maximum reasonable rates, the following rates for switching carload freight within the Chicago switching district, minimum weight 60,000 pounds per car; one-line hauls, 3 cents per hundred pounds; two-line hauls, 3.5 cents per hundred pounds; and three-or-more-line hauls, 4 cents per hundred pounds. Said rates by voluntary action of the carriers became effective on interstate traffic, except railway equipment on its own wheels, on December 10, 1931. The defendant railroad companies on September 10, 1931, filed with the Interstate Commerce Commission a motion or petition seeking appropriate findings and order authorizing and requiring them upon the record as made in Docket 19610 to establish the same switching rates to apply intrastate in the Chicago switching district within Illinois

and Indiana as were found lawful for interstate application in said district. Thereupon the Interstate Commerce Commission denied said petition insofar as making such an order upon the record already made, but did on November 2, 1931, reopen the proceedings in Docket 19610 for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as might be necessary to correct such violation or violations, as might be found to exist.

On December 28, 1931, complaint was filed by the plaintiff, Acme Steel Company, and fifty-seven other individuals, corporations and associations with the Interstate Commerce Commission, attacking the lawfulness of the said increased interstate switching rates which became effective on December 10, 1931, which said complaint was docketed as No. 24950. Thereafter defendant railroad corporations filed a motion to dismiss the said complaint without hearing, which motion was denied.

The said reopened Docket 19610 and the said complaint No. 24950, were assigned for hearing at the same time and place; the two cases were heard separately before Examiners Howard C. Faul and W. B. Wilbur, but it was stipulated that any pertinent or relevant testimony in the record in one case should be considered as part of the record in the other case. Separate briefs were required to be filed, but in view of the nature of the testimony and the conclusions reached, the said Exam-

iners issued a consolidated proposed report. A copy of said proposed report is attached hereto and made a part hereof, as fully as though set forth herein, marked "Exhibit B."

Thereafter exceptions were filed by these plaintiffs; oral argument was had and the report and order of the Commission of July 3, 1933, was served on all the parties (195 I. C. C. 89). A copy of said report and order is attached hereto, marked "Exhibit C" and is made a part hereof, as fully as though set forth at length herein.

Said report and order purport to authorize and require the defendant railroad corporations to establish for intrastate switching in the Chicago switching district within Illinos and within Indiana, the same rates as are contemporangously applied to interstate switching of carload freight within the Chicago switching district.

Thereafter, on August 15, 1933, these plaintiffs filed with the Interstate Commerce Commission their joint petition for reopening said proceedings in Dockets 19610 and 24950 for further hearing, for setting aside of the order of July 3, 1933, for reargument and/or reconsideration of the said report and order of July 3, 1933, a copy of which petition is hereto attached, marked "Appendix D" and made a part hereof as fully as though set forth at length herein. Said petition for reopening was denied on October 4, 1933.

Thereafter the defendant carriers filed their joint answer to said petition, dated August 24, 1933, a copy of which answer is hereto attached, marked "Appendix E" and made a part hereof as fully as though set forth at length herein.

Thereafter these plaintiffs filed their joint petition dated September 9, 1933, with the Interstate Commerce

Commission, seeking the suspension of the tariffs of rates and charges purporting to be filed in compliance with the order of July 3, 1933, for the statutory period and for the institution of an investigation into the lawfulness of such proposed rates on intrastate traffic in Illinois and in Indiana within the Chicago switching district, and, in the alternative, for suspension of such tariffs for a period of not less than sixty days to permit careful consideration by the Interstate Commerce Commission of the petition above referred to and also to permit an orderly consideration by any court of competent jurisdiction to which the validity of the order of July 3, 1933, might be submitted for determination, and for appropriate order postponing the effective date of the said order for a like period.

Thereafter, on September 9, 1933, the Interstate Commerce Commission entered its order postponing the effective date of said order for a period of thirty days until October 20, 1933, a copy of said order being attached hereto, marked "Exhibit F" and made a part hereof as fully as though set forth at length herein.

Said petition for suspension of said tariffs was denied on October 4, 1933.

V.

By schedules filed with the Public Service Commission of Indiana prior to April 30, 1927, by their terms purporting to be effective on said date and later dates, carriers operating within the Chicago switching district, in Indiana, proposed to make certain increases and changes in the rates, rules and regulations affecting the handling of commodities included within the so-called Lowrey tariffs within the Chicago switching district and not including commodities carried as exceptions to the Lowrey

basis. By appropriate order, dated April 29, 1927, the Public Service Commission of Indiana suspended the operation of such schedules to August 27, 1927, which were by subsequent orders further suspended to February 1, 1932. All of said tariffs so suspended were the subject of an investigation ordered by the Public Service Commission of Indiana, its Docket No. 8939.

Schedules were filed by the railroad defendants with the Illinois Commerce Commission in which it was proposed to change rates for the transportation of commodities included within the so-called Lowrey tariffs within the Chicago switching district and not including commodities carried as exceptions to the Lowrey basis, which tariffs were suspended on April 19, 1927, by the Illinois Commerce Commission until August 27, 1927, pending a hearing and decision thereon. By appropriate orders the suspension of such tariffs was further extended from time to time until February 1, 1932.

By agreement of all parties to the said proceedings before the Public Service Commission of Indiana, before the Illinois Commerce Commission and the Interstate Commerce Commission, I. C. C. Docket 19610, I. & S. Docket 2900, P. S. C. of Ind. No. 8939, and Ill. C. C. No. 17250, 17269 and 17513 (the latter two dockets embracing proposed increased rates between points in the Chicago switching district and points adjacent thereto) were consolidated and heard jointly on a common record before representatives of the three commissions.

The Illinois Commerce Commission, under date of August 26, 1931, handed down its report, order and requirements, a copy of which is hereto attached, marked "Appendix G" and made a part hereof as fully as though set forth herein at length. By said report and order the Illinois Commerce Commission denied the increases pro-

posed in intrastate switching rates within the Chicago switching district in Illinois. No appeal or judicial review of said report and order was taken or sought by the railroad defendants.

The Public Service Commission of Indiana, under date of August 26, 1931, handed down its report, order and requirements, a copy of which is hereto attached, marked "Appendix H" and made a part hereof as fully as though set forth herein at length. By said report and order the Public Service Commission of Indiana denied the increases proposed in intrastate switching rates within the Chicago switching district in Indiana. No appeal or judicial review of said report and order was taken or sought by the railroad defendants.

By appropriate order, the schedules under suspension in the respective proceedings before the Illinois Commerce Commission and the Public Service Commission of Indiana were ordered permanently canceled as of November 10, 1931.

VI.

In alleged conformity with said order of July 3, 1933, the defendant railroad carriers filed with the Interstate Commerce Commission their various tariffs, a list of which is attached hereto as "Appendix I" by which tariffs the tariffs and schedules naming rates for intrastate switching in Illinois, filed with the Illinois Commerce Commission, were canceled; also tariffs and schedules naming rates for intrastate switching in Indiana, within the Chicago switching district, filed with the Public Service Commission (of Indiana) were cancelled, and other tariffs named in said appendix bearing an I. C. C. number were filed with the Interstate Commerce Commission attempting to make effective for intrastate switching in

Indiana and for intrastate switching in Illinois, within the Chicago switching district, the same rates as were in effect for switching interstate traffic within the Chicago switching district, viz.: 3 cents per hundred pounds for one-line hauls, 3.5 cents per hundred pounds for two-line hauls, and 4 cents per hundred pounds for three-or-more-line hauls, carload minimum 60,000 pounds, with certain exceptions hereinafter set forth.

All one-line rates for switching in the Chicago switching district, both interstate and intrastate, are contained in tariffs filed by individual railroad defendants. All hauls over the lines of more than one of the individual railroad defendants, when moving between industies within the Chicago switching district, are published in joint tariffs of which C. W. Galligan and B. T. Jones are the issuing agents.

The investigation by the Interstate Commerce Commission into the lawfulness of switching rates within the Chicago switching district included only rates for the movement of carload freight to and from industries, and did not include, embrace or determine the lawfulness of rates for switching carload freight to or from team tracks within the Chicago switching district.

VII.

The evidence in justification of the proposed increase in switching rates in the Chicago district from 2.5 cents for one-line and two-line hauls, and 3 cents for three-or-more-line hauls, to 3 cents for one-line, 3.5 cents for two-line and 4 cents for three-or-more-line hauls, presented by the carriers consisted almost entirely of a cost study made by certain defendant carriers during varying one-week periods in 1927, as applied to a traffic test of movement over the lines of all the defendant carriers

in September, 1926. The said cost study, as will more particularly appear from an examination of the reports of the Illinois Commerce Commission and of the Public Service Commission of Indiana, was so inaccurate that it constituted no reliable guide as to the actual costs of the services rendered. The Interstate Commerce Commission expressed the view that it could not accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration, and applying other tests to determine the reasonableness of the rates, contrasted the proposed rates with rates which it had prescribed on brick and related articles for application in the southwest, with a distance scale of rates which it had prescribed for application on sand, gravel, crushed stone, etc., between points in Arkansas, Louisiana and Texas and western Louisiana, and with the scale of rates prescribed for application throughout Official Territory on a large list of iron and steel articles. On such findings the Interstate Commerce Commission reached the conclusion that the rates proposed of 3 cents for one-line hauls, 3.5 cents for two-line hauls, and 4 cents for three-or-more-line hauls, carload minimum 60,000 pounds, would not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels. These plaintiffs appropriately requested the Interstate Commerce Commission to require all the defendant railroad companies to conduct a cost study for representative periods of cars handled in switching service within the Chicago switching district, under joint cooperation of the carriers, the Illinois Commerce Commission, Public Service Commission (of Indiana) and the Interstate Commerce Commission, to be presented as evidence in reopened Docket No. 19610 not only to correct obvious defects in the former cost study but to reflect present

costs, wherein was involved the lawfulness of the relation between interstate and intrastate rates under Section 13 of the Interstate Commerce Act, but said request was denied. The order of July 3, 1933, was made on the record before the Interstate Commerce Commission in Docket 19610 and Docket No. 24950.

VIII.

The said order of the Interstate Commerce Commission, dated July 3, 1933, is unlawful and void in the following respects:

(a) The Commission was without authority either in law or in fact to make the said order.

(b) The order is void because there is no evidence upon which the Commission could find that the rates of 2.5 cents for one-line and two-line hauls, and 3 cents for three-or-more-line hauls, in intrastate switching in the State of Illinois, within the Chicago switching district, and in the State of Indiana, within the Chicago switching district, constitute an unjust discrimination against interstate commerce.

(c) The Commission failed to make requisite findings:

1. The intrastate rates within Illinois and within Indiana are less than just and reasonable rates.

2. The amount of the revenue which each of the defendant railroads has derived, or could reasonably be expected to derive, on intrastate traffic in Illinois and in Indiana, separately stated as to one-line, two-line and three-or-more-line hauls, under the present rates and under the rates which were found not unreasonable by the Interstate Commerce Commission for application on interstate traffic.

IX.

The order is void because based on the following findings which were unsupported by any evidence before the Interstate Commerce Commission:

(a) That the maintenance of lower intrastate rates by the railroad defendants in the Chicago switching district than are contemporaneously effective on interstate commerce in the Chicago switching district results and will for the future result in unjust discrimination against interstate commerce.

(b) That the record is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis.

(c) That no substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied to intrastate traffic.

Not only is there no evidence to support the findings just referred to, but the record abundantly supports the recommendation of the examiners in their proposed report that the commission find that the carriers will lose instead of gain revenue by increasing the intrastate rates to the interstate basis. Moreover, since the record closed before the Interstate Commerce Commission, additional facts have been developed which were brought to the attention of the Interstate Commerce Commission in petition for reopening dated August 15, 1933, page 68 *et seq.* (Appendix D hereto) showing that if the intrastate rates be increased to the interstate basis the carriers will lose additional business to that already covered by testimony before the Commission, further demonstrating that increasing the intrastate rates to the interstate level in the Chicago switching district will result in diversion of

many commodities in large and increasing tonnage from rail transportation to other forms of transportation in the Chicago switching district.

X.

The order is void because the evidence on which it is based shows conclusively:

(a) The service performed in intrastate switching in the Chicago switching district in Illinois and in Indiana is substantially less than that performed in interstate traffic.

(b) The disparities between the intrastate rates, as authorized by the Illinois and Indiana commissions, on the one hand, and the interstate rates, authorized by the Interstate Commerce Commission, on the other hand, are justified by the difference in service for which the respective rates are charged.

The average one-line haul in Illinois intrastate is 7.46 miles; in Indiana intrastate, 6.3 miles, the average for the two states intrastate being 7.2 miles; and in interstate commerce 15 miles; the Illinois intrastate average being 49.7 per cent, and the Indiana average being 42 per cent, of the average interstate haul. The rate in effect on July 3, 1933, intrastate in Illinois and in Indiana of 2.5 cents for one-line haul is 83.3 per cent of the interstate rate of 3 cents for one-line.

The Illinois intrastate average two-line haul is 15.9 miles, the Indiana intrastate average two-line haul is 7.3 miles, the average intrastate two-line haul for both states is 15.6 miles; and the interstate average two-line haul is 27.5 miles. The two-line average haul for Illinois of 15.9 miles is 57.8 per cent; for Indiana of 7.3 miles is 26.5 per cent, and for the intrastate average for both Illinois and Indiana of 15.6 miles is 56.7 per cent of the

two-line interstate average haul of 27.5 miles. The 2.5-cent rate for two-line hauls intrastate is 71.4 per cent of the two-line interstate rate of 3.5 cents.

The three-line average haul for Illinois intrastate traffic is 23.4 miles and for interstate traffic is 34.2 miles. There was no three-line intrastate haul in Indiana shown by cost or revenue tests. The Illinois three-line average haul is 68.4 per cent of the interstate three-line average haul of 34.2 miles. The 3-cent intrastate rate applicable for three-or-more-line hauls is 75 per cent of the 4-cent three-or-more-line haul interstate rate.

Any disparity in rates intrastate and interstate is much more than justified by the difference in the average service performed intrastate and interstate. It was on this ground that Chairman Farrell and Commissioner Mitchison dissented from the report and order of the Commission of July 3, 1933.

(c) Intrastate rates charged for switching services on Illinois intrastate traffic and on Indiana intrastate traffic are not less than just and reasonable rates.

(d) While interstate rates now in effect were found not unreasonable by the Interstate Commerce Commission on the record closed in 1928, that finding was predicated largely on a cost study ascertained as to certain traffic moving during certain periods in 1927 over certain railroads applied on certain traffic moving in September, 1926. The record fails to show that in view of changed conditions those rates are now not in excess of just and reasonable rates and in excess of what the traffic will bear.

(e) The interstate rates prescribed by the Interstate Commerce Commission for application on switching traffic in the Chicago switching district are so high that a large proportion of the switching traffic has been di-

verted from the rails of the carriers to competing forms of transportation, such as plant facilities, trucks, waterways and pipe lines, and increasing the intrastate rates to the interstate level will increase the volume of traffic so diverted from the rails of the carriers to such competing forms of transportation.

(f) Of the thirty-seven railroad defendants subject to the Interstate Commerce Commission's order of July 3, 1933, only the following carriers apply one-line interstate rates authorized by the Commission for transportation in the Chicago switching district:

The Baltimore and Ohio Chicago Terminal Railroad Company,
Chicago and Erie Railroad Company,
Indiana Harbor Belt Railroad Company,
The Michigan Central Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company.

None of the remaining railroad defendants perform any one-line interstate switching, but all do perform one-line intrastate switching. By reason thereof there can be no unjust discrimination against one-line interstate traffic resulting from the rates of different carriers for one-line intrastate switching, charged by the carriers performing intrastate one-line switching service and no similar interstate service.

(g) There are a large number of commodities moving one-line intrastate in Illinois and one-line intrastate in Indiana that are not shown to move one-line interstate in the Chicago switching district. Rates on such commodities cannot discriminate unjustly against interstate traffic that does not exist in the case of such commodities.

(h) The record does not disclose the revenue which

each of the defendant railroads has derived or which could reasonably be expected to be derived on intrastate traffic in Illinois and in Indiana separately stated as to one-line, two-line and three-or-more-line hauls, either under the present rates or under the rates which were found not unreasonable by the Interstate Commerce Commission for application on interstate traffic, and therefore the Commission could not make the finding which under the law they must make as to the revenue derived under present rates and which will be derived under rates required to be made effective by the order of July 3, 1933, from which could be determined whether the carriers will have more revenue if the order becomes effective than if the present rates remain in effect.

(i) Increasing intrastate rates of the railroad defendants in Illinois and in Indiana to the level prescribed for interstate rates in the Chicago switching district will reduce the volume of business handled and the revenue received by such defendants below the amount they now receive for the transportation of intrastate traffic on the rates now in effect.

(j) The revenues of each of the defendant railroads on intrastate switching traffic in Indiana and in Illinois contribute their fair proportion of their revenues which are ample to maintain an adequate transportation system, and cast no undue burden upon the interstate revenues of each individual defendant railroad.

(k) The cost studies presented by the defendant railroads to the Interstate Commerce Commission are based on arbitrary assumptions involving the use of unweighted averages, are of carriers not representative of the entire switching district, are of alleged costs of a few of the carriers for periods of time entirely too limited in scope and not representative of the business over a period of time sufficient to reflect the average an-

nual cost of switching service in the Chicago switching district, were made six years ago, were applied against traffic moving seven years ago, and include services performed outside the Chicago switching district, and therefore are so remote and so irrelevant as to be wholly improper as a basis for finding present costs, and are otherwise so defective as to constitute no proper basis for a finding as to reasonableness or unreasonableness of rates now in effect, or which were in effect prior to December 10, 1931, and which are proposed to be made effective October 20, 1933, on interstate traffic and on intrastate traffic.

(l) The cost studies presented in evidence by the railroad defendants before the Interstate Commerce Commission with all their defects, and giving full effect to all modifications suggested by shippers, state commissions and rail carriers, tend to show that rates now in effect on intrastate traffic for one-line, two-line and three-or-more-line hauls, contribute their fair proportionate share of the revenues of each of the railroad defendants, and there is no evidence from which it can be found that present intrastate rates in Illinois and in Indiana fail to produce their fair proportionate share of revenues which the commodities transported in the Chicago switching district under such rates should yield to each of the railroad defendants.

(m) The nine railroad defendants engaged exclusively in switching service in the Chicago switching district, viz:

The Baltimore and Ohio Chicago Terminal Railroad Company,

The Belt Railway Company of Chicago,

Chicago & Illinois Western Railroad,

Chicago River and Indiana Railroad Company—Chicago Junction Railway,

Chicago Short Line Railway Company,
Chicago, West Pullman & Southern Railroad Company,
Illinois Northern Railway,
Indiana Harbor Belt Railroad Company,
Pullman Railroad Company,

showed a prosperous condition; the switching rates yielded ample revenue for all necessary purposes and a fair return upon the fair value of their common carrier properties.

(n) Inasmuch as the Interstate Commerce Commission has properly found in its report that the maintenance of intrastate switching rates within the Chicago switching district in Indiana and in Illinois on a lower basis than the corresponding all-commodity rates in interstate switching service, has not caused nor will cause, any undue preference and advantage to persons or localities in intrastate commerce or any undue prejudice and disadvantage to persons or localities in interstate commerce, within the Chicago switching district, it must follow that no unjust discrimination results or can result against the interstate traffic within the Chicago switching district of such persons paying the revenue on the interstate traffic, or the localities within the Chicago switching district between which such interstate commerce is handled.

(o) The service rendered on intrastate traffic in Indiana and in Illinois and the service performed on interstate traffic within the Chicago switching district, are not of a like and contemporaneous character performed under substantially similar circumstances and conditions. The intrastate traffic and the interstate traffic within the Chicago switching district are not of a like kind. The disparity between the level of interstate rates and of intrastate rates is not so substantial as to operate as a

real discrimination against, and obstruction to, interstate commerce.

(p) There was no evidence from which the Commission could find that intrastate rates on grain in Illinois and/or in Indiana in the Chicago switching district, constitute an unjust discrimination against interstate commerce. At no time prior to July 31, 1931, was any tariff filed with the Interstate Commerce Commission proposing any increase in interstate switching of grain and only as a result of the order of the Commission of July 31, 1931, was there any increase in rates of switching on grain, which then ranged from $4.95 per car to $6.75 per car. Subsequent to July 31, 1931, the interstate switching rates on grain in alleged conformity with the order of July 31, 1931, effective December 10, 1931, were increased to 3 cents per hundred pounds for one-line hauls, 3.5 cents for two-line hauls and 4 cents for three-or-more-line hauls, minimum 60,000 pounds per car, the increases over the prior rates approximating 400 per cent for one-line hauls, 250 per cent for two-line hauls, and 150 per cent for three-or-more-line hauls. At no time have the defendant railroad companies filed any tariffs or made any effort to increase intrastate switching rates on grain in Chicago switching district in Illinois and/or in Indiana, and no investigation has been made by either the Illinois Commerce Commission or the Public Service Commission (of Indiana) as to the lawfulness of present intrastate rates on grain within their respective jurisdictions.

When the so-called Lowrey agreement became effective in 1910, establishing the so-called all-commodity basis of switching rates within the Chicago switching district, rates on grain, coal and coke were specifically excepted from the rates provided for in said agreement. From that date until the date hereof rates on grain for intra-

state switching in Illinois and in Indiana within the Chicago switching district have been published as exceptions to the all-commodity basis, and on interstate shipments within the Chicago switching district interstate rates prior to July 31, 1931, were carried as an exception to the all-commodity interstate basis provided for in the said Lowrey agreement.

The grain switching rates within the Chicago switching district, both interstate prior to December 10, 1931, and intrastate to date hereof, were voluntarily established by the railroad defendants and maintained for approximately twenty years and thus are *prima facie* reasonable rates; there was no evidence whatever in the record to justify the increases in said grain switching rates under the order of the Commission of July 31, 1931. The situation with respect to grain switching rates is typical of the situation as to all other commodities which are carried on rates less than the Lowrey basis.

The evidence before the Interstate Commerce Commission showed that present intrastate rates on grain within the Chicago switching district are not less than just and reasonable rates and there was no evidence upon which the Commission could find otherwise. There was no specific finding by the Commission that intrastate rates on grain in the Chicago switching district constituted an unjust discrimination against interstate traffic.

XI.

The order of the Interstate Commerce Commission of July 3, 1933, is void by reason of its indefiniteness and lack of precision in the following respects:

(a) The order of the Commission requires each of the individual rail carriers "according as they participate in the transportation" to establish on intrastate

traffic, rates which are not less than those "contemporaneously applied by said carriers to the transportation by them of all commodities in interstate switching service." The order of the Commission is indefinite in that it fails specifically to except from the order those carriers which perform a one-line haul in intrastate commerce but perform no one-line haul in interstate commerce.

(b) The entire inquiry and investigation of the Commission was directed solely to switching service performed between industries in the Chicago switching district, but the order of the Interstate Commerce Commission is broad enough to include switching service performed between team tracks and industries, and between team tracks within the Chicago switching district. The order is indefinite in that it fails precisely to exclude traffic moving to or from team tracks within the Chicago switching district. For these reasons the order of the Commission is indefinite and therefore void.

XII.

The Commission erred in refusing to reopen the proceedings in Docket 19610, in refusing and failing to vacate its order of July 3, 1933, and in refusing to set the case for further hearing, as prayed for in plaintiffs' joint petition of August 15, 1933, and therefore the order of July 3, 1933, is void and should not be permitted to go into effect.

XIII.

At the hearing herein plaintiffs will tender in support of the allegations herein a certified copy of the record before the Interstate Commerce Commission out of which the order of July 3, 1933, was issued.

XIV.

Each of the railroad defendants has filed with the Illinois Commerce Commission and with the Public Service Commission (of Indiana) to the extent that their individual lines lie within those respective states, tariffs canceling the intrastate rates now in effect of 2.5 cents for one-line and two-line hauls, and 3 cents for three-or-more-line hauls, and with certain exceptions have filed with the Interstate Commerce Commission schedules containing rates which are in excess of those now in effect on intrastate traffic, in alleged conformity with the order of the Interstate Commerce Commission of July 3, 1933. Inasmuch as the order, in alleged conformity with which the rates established on intrastate traffic are increased to the level of the interstate rates, is void, the order of this court setting aside the order of the Interstate Commerce Commission herein complained of will not grant full measure of relief to these plaintiffs unless all action which has been taken by the individual railroad defendants and the action of their joint agents be set aside and held for naught, thereby restoring and making effective the lawful intrasfate rates in effect on July 2, 1933, in Illinois and in Indiana in the Chicago switching district.

On such traffic as will continue to move in intrastate commerce within the Chicago switching district in Illinois and in Indiana, the plaintiff, Acme Steel Company, and others similarly situated, will each be compelled to pay increased rates and charges aggregating sums in excess of $3,000.00, thereby subjecting plaintiff Acme Steel Company and others on whose behalf this suit is brought to irreparable loss and injury.

In consideration whereof, forasmuch as your plaintiffs are remediless in the premises at law, and relievable only

in a court of equity, plaintiffs pray that a preliminary or interlocutory order or injunction be entered restraining and suspending the enforcement, operation and execution of the said order of the Commission until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the enforcement, operation and execution of said order.

And plaintiffs further pray that a preliminary or interlocutory order or injunction be entered, requiring the railroad defendants, and each of them, to cancel the tariffs herein referred to, filed in alleged conformity with the said order of the Interstate Commerce Commission, and suspending the enforcement of the rates therein provided for on intrastate traffic until final determination of this cause, and that upon the final hearing herein a decree be entered perpetually enjoining, suspending, annulling and setting aside the said tariffs and requiring the said defendants to file new tariffs restoring the rates in effect on July 2, 1933, on intrastate traffic in Illinois and in Indiana in the Chicago switching district, unless and until authorized to be changed by the Illinois Commerce Commission and or Public Service Commission (of Indiana), in accordance with the laws of their respective states.

And plaintiffs further pray, inasmuch as the purpose of the foregoing prayers for relief is to set aside the order of the Commission of July 3, 1933, and to restore the status quo of July 2, 1933, for such other and further orders or decrees as may be necessary to set aside said order of the Interstate Commerce Commission, and to require the railroad defendants, and each of them, to vacate, annul and set aside any and all action which may have been taken under and by reason of said order of the Commission, and to take such action as may be nec-

essary to restore the parties and properties affected by said order to the status of July 2, 1933; and for such further and other relief in the premises as the nature of the case shall require, and to this court shall seem meet.

And your plaintiffs further pray, that your Honors will direct proper writs of subpoena be issued and that a copy of this bill of complaint be forthwith served upon each and every of the defendants herein named, in the manner provided in the Acts of Congress, and your plaintiffs will ever pray.

IRVIN ROOKS,
Solicitor for Illinois Commerce Commission.

PHILIP LUTZ, JR.,
HERBERT J. PATRICK,
Solicitors for Public Service Commission (of Indiana),

HERBERT J. CAMPBELL,
Solicitor for Board of Trade of the City of Chicago.

LUTHER M. WALTER,
Solicitor for Acme Steel Company.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

O. R. LIVINGHOUSE, of Indianapolis, Indiana, on oath states that he is director of Tariff Bureau, Public Service Commission (of Indiana), one of the plaintiffs in the above entitled cause; that he has read the above bill of complaint and knows the contents thereof, and that the same are true of his own knowledge.

(Signed) O. R. LIVINGHOUSE.

Subscribed and sworn to before me, this 4th day of October, 1933.

(Signed) M. M. KELLER.
Notary Public.

(Seal)

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APPENDIX A.

17096

INTERSTATE COMMERCE COMMISSION

No. 19610 [1]

SWITCHING RATES IN CHICAGO SWITCHING DISTRICT

Submitted December 4, 1930. Decided July 31, 1931

1. Upon general investigation of the switching rates, carloads, applicable within the Chicago switching district, reasonable rates prescribed to apply on an all-commodity basis, except railway equipment on own wheels.
2. Use of private equipment to be compensated for by rental charges instead of reductions in switching rates.
3. Rates proposed for application between Chicago Heights Ill.; and the Chicago switching district not shown to be unlawful, except in so far as such rates may be in conflict with the findings in *Indiana State Chamber of Commerce v. A. T. & S. F. Ry. Co.*, 122 I. C. C. 81.
4. Schedules of proposed changes in rates under suspension in Investigation and Suspension Docket No. 2900 ordered canceled without prejudice to the filing of new schedules in conformity with the findings herein.
5. Complaint in Docket No. 20006 dismissed.

J. N. Davis, J. R. Barse, P. F. Gault, E. A. Smith, D. P. Connell, Guernsey Orcutt, H. I. Allen, H. D. Shean, and *Nelson Trattman* for railroads serving Chicago switching district; *Sherman A. Gillett* for Chicago & North Western Railway; *J. H. Brown* for Belt Railway Company of Chicago; *M. S. Connelly* for Pennsylvania Railroad; *K. L. Richmond* and *J. F. Connors* for Chicago & Eastern Illinois Railway Company; *T. F. Dooley* for Chicago & Calumet River Railroad Company; *R. C. Davidson* for Chicago, Rock Island & Pacific Railway Company; *T. E. Bond* for Elgin, Joliet & Eastern Railway Company; *W. G. Wagner* for Chicago, Burlington & Quincy Railroad Company; *F. C. Furry* for Illinois Central Railroad Company and Chicago & Illinois Western Railroad Company; *Guy A. Gladson* for receivers of Chicago & Alton Railroad Company; *B. S. Lottenville* for Chicago Heights Terminal Transfer Railroad Company; and *C. W. Galligan* for Illinois Freight Association.

John F. Bonner for Minnesota Railroad and Warehouse Commission; *W. A. Anderson* for Railroad Commission of Wisconsin; *D. L. Kelley* for South Dakota Board of Railroad Commissioners; and *Claude L. Draper* for Public Service Commission, State of Wyoming.

Luther M. Walter for Chicago Shippers Conference Association and Chicago Association of Commerce; *C. E. Hochstedler* for Chi-

[1] This report also embraces Investigation and Suspension Docket No. 2900, Switching Rates Between Points in Chicago and Chicago Heights Districts and No. 20006, Illinois Slag & Ballast Company v. Chicago, West Pullman & Southern Railroad Company et al.

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cago Association of Commerce; *R. B. Coapstick* for Indiana State Chamber of Commerce; *J. S. Brown* and *H. J. Campbell* for Board of Trade for City of Chicago; *Frank B. Townsend* and *Lee Kuempel* for Minneapolis Traffic Association; *Fred S. Keiser* for Duluth Chamber of Commerce; *J. D. Humphrey* for Hammond Chamber of Commerce, Hammond Manufacturing Association, and others; *H. F. Sundberg* for Chamber of Commerce, Cedar Rapids, Iowa; *R. I. Pierce* for Terre Haute Chamber of Commerce and Highland Iron & Steel Company; *Howard P. Roe* and *Ernest S. Ballard* for city of Chicago Heights, Ill.; *F. B. McElroy, C. B. Cardy* and *R. I. Pierce* for Manufacturers Association of Chicago Heights, Ill.; *L. G. Macomber* for Detroit Board of Commerce; and *Ralph N. Newmann* for Lions Club of Des Plaines.

Murray N. Billings for Illinois Steel Company; *Henry C. Keene*, and *Harry C. Ames* for Grasselli Chemical Company; *W. J. Hammond* and *R. R. Flynn* for Inland Steel Company; *W. Y. Wildman* and *R. W. Ropiequet* for Illinois Coal Traffic Bureau; *George Patterson Boyle* for Illinois Slag & Ballast Company; *Walter Hayes* for Sears, Roebuck Company; *H. R. Park* for Chicago Live Stock Exchange; *E. S. Gubernator, R. S. Waterbury*, and *E. W. Glaesel* for Lehigh Portland Cement Company; *Robert J. McBride* and *Warren Burkhart* for Illinois Lumber & Material Dealers Association, Burgess Battery Company, Beloit Iron Works, and Jos. F. Herman Company; *J. D. Forrest* and *G. H. Staut* for By-Products Coke Corporation; *Robert Hula* for Clayton Mark & Company; *W. M. O'Keefe* for Chicago Mercantile Exchange and Live Poultry & Dairy Shippers Association; *Herman Mueller* for St. Paul Association of Public & Business Affairs; *C. B. Cardy* and *W. F. Garman* for Manufacturers Association of Chicago and stone producers in Chicago switching district; *J. W. McRae* for Pennoyer Merchants Transfer Company; *W. F. Coyne* and *W. R. Sanborn* for Lehigh Stone Company; *Quinn Morton* for C. L. Willey Company; *C. A. Shank* for National Brick Company; *W. M. Councill* for National Fireproofing Company; *H. H. Bascom* for Youngstown Sheet & Tube Company; *C. T. Stripp* for National Malleable & Steel Castings Company; *A. R. Miller* and *H. G. Brown* for Illinois Brick Company; *H. W. Robertson* and *H. H. Singer* for Sinclair Refining Company; *Burton H. Atwood* and *C. B. Ackerman* for Elmhurst-Chicago Stove Company; *J. L. Roberts* and *N. L. Shannon* for Barrett Company; *Alfred S. Knowlton* for American Tar Products Company and Chicage By-Product Coke Company; *Adam Bessolo, A. M. Cordell*, and *Alfred S. Knowlton* for Standard Steel Car Company and subsidiaries; *T. W. Mackey* for Western Shade Cloth Company; *Fred C.*

Rose for Marsh & Truman Lumber Company; *John D. Ross* for General Chemical Company; *F. D. Porter* for S. Berkenstine Sons, Incorporated; *P. St. Pierre* for A. L. Randall Company and Dure Paper Products Company; *L. E. Whitney* for National Pickle Packers Association; *F. W. Rogers* for Flintkote Company; *M. H. Strothman* for Washburn Crosby Company; *Sam Frier* for Wholesale Sash & Door Association; *E. C. Wilmore* for Sefton Manufacturing Company; *C. D. Miller* for American Maize Products Company; *F. F. Grubbs* for Chapin & Company; *M. S. Allison* for Federal Cement Tile Company; *A. L. Dreher* for Hyman-Michaels Company; *F. M. Garland* and *A. M. Cordell* for Pressed Steel Car Company; *M. D. Perry* for Union Drawn Steel Company; Gary Screw & Bolt Company, and Pittsburgh Screw & Bolt Company; *R. D. Reeds* and *E. F. Pine* for Confectioners Traffic Association and E. J. Brach & Sons; and *A. E. Huenergoger* for Confectioners Traffic Association and Zion Institutions & Industries;

R. E. Riley for Chicago Brick Company, Chicago Brick Exchange, Lake Sand Corporation, and L. Richard Company; *F. H. Belden* and *E. S. Huebner* for Marblehead Lime Company; *F. D. Wilder* for Chicago Railway Equipment Company; *R. C. Livingston* for Interstate Iron & Steel Company; *F. C. Favor Paper Company* for Chicago Paper Association; *J. H. Kane* for Material Service; *T. P. Scanlon* for J. B. Inderreiden Company and Amber Furniture Company; *H. N. Williams* for Jewel Tea Company; *J. T. Dover* and *W. J. Brown* for McClintic-Marshall Construction Company; *E. W. Sieboldt* and *J. R. Van Slyke* for Roxana Petroleum Corporation; *A. E. Sicilia* for Chicago Wool Trade Association; *P. A. McFarlane* for Wisconsin Lime & Cement Company; *H. J. Meilahn* for J. J. Bradenoch Company; *H. F. Obermayer* for Stratton Grain Company and Quincy Elevator Company; *W. J. M. Lahl* for American Seating Company; *A. A. Adams* for Chicago Retail Lumber Dealers Association and Edward Hines Lumber Company; *H. B. Kahl* for Sprague Warner Company; *Alfred E. Treen* for Illinois Slag & Ballast Company; *W. S. Short* for Seaman Paper Company and H. P. Smith Paper Company; *S. A. Poyer* for Chicago Bridge & Iron Works; *Irwin W. Hart* for Franklin MacVeagh & Company; *F. R. Jerome* for Traffic Bureau of Associated Industries; *L. J. Thomas* for Johns-Manville Corporation; *Arthur W. Fredrickson* for Commonwealth Edison Company; *D. C. Norris* for Wolff Manufacturing Company; *Wm. Lister* for city of Evanston; *W. J. Womer* for Chicago District Ice Association and Lincoln-Boyle Ice Company; *John W. Bingham* for Corn Products Refining Company; *W. J. Rowley* for Albert Dickinson Company; *R. C. Ross* for Jos. T. Ryerson & Son; *B. J. Klein* for Southern Cotton Oil Company;

Henry Hauseman for Pure Oil Company; *J. A. Brough* for Crane Company; *R. E. Kosmar* for R. F. Conway Company; *J. L. Hodgson* for American Sand & Gravel Company; *Walter E. McCornack* for Chicago Gravel Company and Chicago Stone Company; *W. H. McReynolds* for Manitowoc Portland Cement Company; *F. S. Hollands* and *H. T. Zaremba* for Standard Oil Company of Indiana; *John J. McGovern* for American Linseed Company and Best Foods Company; *John H. C. Kirk* for Darling & Company; *F. B. McElroy* for Whiteacre Greer Fireproofing Company, and American Manganese Steel Company; *Leonard C. Reincke* and *David Dunn* for Wm. Wrigley, Jr., Company; *M. A. Erickson* for Shotwell Manufacturing Company; *Fred Mueller* for Cracker Jack Company; *J. H. Matheson* for Columbia Mills, Incorporated; *H. S. Welton* for Victor Chemical Company; *F. D. Porter* for National Association Waste Materials, Incorporated; *B. J. Roggenbuck* for John F. Jelke Company and Geo. P. Brown Company; *B. H. Rubenstein* and *L. A. Boulger* for Ruberoid Company; *Charles W. Stadell* and *H. D. Pixley* for Carson Pirie Scott & Company; *W. J. Buchanan* for Terminals & Transportation Corporation of Illinois; *Alexander Stuart* for Rosenbaum Grain Corporation; *R. W. Campbell* for Butler Paper Corporation; *F. D. Hassian* for Rathbone, Hair & Ridgway Company and Shavings & Sawdust Corporation; *Charles A. Livingston* for Illinois Manufacturers Association; *W. D. Lindsay* for United States Gypsum Company; *Anton J. Berger* for Construction Materials Company; *James B. O'Rear* for Acme Steel Company; *H. A. Brandon* for Bird & Son, Incorporated; *C. C. Tiffany* and *Osborn Van Brunt* for Certain-teed Products Corporation; *J. J. Low* for Briggs & Turivas, Incorporated; *R. R. Hargis* for Wilson & Company; *Paul E. Blanchard* and *John R. Baker* for Armour & Company; and *R. D. Rynder* and *Wm. N. Strack* for Swift & Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions to the report proposed by the examiners were filed by many of the interested parties, to which certain of the parties replied, and the case was orally argued. Our conclusions differ somewhat from those proposed by the examiners.

In No. 15110, *Jones & Laughlin Steel Corp.* v. *B. & O. R. R. Co.*, 96 I. C. C. 682, decided April 15, 1925, we prescribed a distance scale of reasonable maximum rates on iron and steel articles, in carloads, from the Pittsburgh group to St. Louis, Mo., and to certain destinations in Illinois and Indiana, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Subsequently, the carriers attempted to realign

the rates on iron and steel articles in Illinois Freight Association territory to conform with the scale of rates prescribed in *Jones & Laughlin Steel Corp. v. B. & O. R. R., supra*, hereinafter referred to as the 15110 scale. The rates proposed were filed to become effective April 25, 1926, but the schedules were suspended in I. & S. No. 2658, *Iron and Steel between Points in Illinois Freight Committee Territory*, because of the failure to realign at the same time the rates on iron and steel articles within the Chicago switching district, hereinafter called the district, and also because of the failure of several of the interested carriers to revise the rates from Gary, Ind., to points within the district in harmony with the 15110 scale. The suspension order subsequently was vacated, except as to the rates from Chicago Heights, Ill., and Gary. Thereupon, at the request of the commission, the carriers gave consideration to a realignment of the rates on iron and steel articles between Chicago Heights and Gary on the one hand, and points within the district on the other, and between points within the district. Tariffs were filed to become effective October 20, 1926, naming rates to apply within the district of 3, 5.5, and 6.5 cents, respectively, for one, two, and three-or-more line hauls, carload minimum 60,000 pounds, with an alternative rate of 8 cents, minimum 36,000 pounds, applicable to two and three line hauls. These schedules, upon protest, also were suspended in I. & S. No. 2780, *Iron and Steel Between Points in the Chicago Switching District*. The cases[2] were heard in part on February 16, 1927.

In the meantime numerous conferences were held between the carriers and representatives of various shippers in the Chicago district with a view to reaching an amicable adjustment of the rates on all commodities moving within the district. Thereupon, respondents in No. 2658 and No. 2780 filed tariffs effective March 19, 1927, canceling the schedules under suspension, and the proceedings were discontinued. As a result of these conferences the carriers filed new schedules to become effective April 30, 1927, and on later dates, naming rates of 3, 3.5, and 4 cents to supersede the effective rates of 2.5, 2.5, and 3 cents, respectively, for 1-line, 2-line and 3-or-more-line hauls, for application within the district, such rates to apply not only on iron and steel articles but on commodities generally, except grain, grain screenings, and railway equipment on own wheels, and excepting livestock via the Baltimore & Ohio Chicago Terminal Railroad, and similar rates to apply on the same commodities[3] between points in the district on the one hand and Chicago Heights on

2 Including Investigation and Suspension Docket No. 2713, Iron and Steel Articles from Brazil and Terre Haute, Ind., to Chicago subsequently disposed of in No. 17000, Part 6, *Iron and steel Articles*, 155 I. C. C. 517, 581.

3 Excepting brick and articles taking the same rates, including common brick.

the other, and to and from points adjacent to the district on carload traffic on which Chicago rates apply. These so-called compromise rates were suspended in I. and S. No. 2900, *Switching Rates Between Points in Chicago and Chicago Heights Districts.*

Thereupon, in view of the limited record which could be developed under the issues presented in the suspension proceeding, on our own motion we entered upon the instant proceeding, No. 19610, of inquiry and investigation into and concerning the lawfulness of all rates and charges for the switching within the Chicago switching district of all carload traffic moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful switching rates for said traffic as the facts and circumstances may appear to warrant. No. 2900 was consolidated with No. 19610 and the suspension date in the former case was subsequently voluntarily postponed until February 1, 1932.

Rates herein are stated in cents per 100 pounds, unless otherwise noted.

NO. 20006

By complaint filed August 26, 1927, the Illinois Slag & Ballast Company alleges that the rates charged for the transportation of crushed slag, in carloads, from its plant in South Chicago (Irondale), Ill., to points in the Chicago, Ill.-Gary, Ind., district are unjust and unreasonable. Reparation and reasonable rates for the future are sought. A similar complaint was filed with the Illinois Commerce Commission attacking the intrastate rates in the State of Illinois.

The case was consolidated and set for hearing with the general investigation. At the hearing a motion was made by complainant to dismiss without prejudice in so far as the complaint asks rates different on crushed slag than on crushed stone and gravel within the district. Complainant explained that the primary purpose for filing the complaint was to seek different rates on crushed slag than on crushed stone and gravel, and this issue since having been adjudicated he asked that it be dismissed. In *Chicago Gravel Co. v. A., T. & S. F. Ry. Co.*, 146 I. C. C. 290, decided July 3, 1928, at pages 291 and 292, we said:

> Slag undoubtedly competes with gravel and crushed stone. It has substantially the same average loading, moves in the same kind of equipment, and is given the same line-haul and terminal service. In *Penn Sand & Gravel Prod. Asso. v. B. & O. R. R. Co.*, 104 I. C. C. 717, we said:
>
> "Generally speaking, there is no transportation reason why the rates on sand and gravel should be higher than the rates on slag or crushed stone. In most territories, and in the States, they are given the same rates, and where we

have prescribed scales in any territory on all of them they have been rated the same."

In *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, we prescribed a uniform scale of rates on sand, gravel, crushed stone, and slag requiring certain of the rates on gravel to be made the same as those on slag under a finding of undue prejudice.

In the latter case we found that any lower rates on slag than applied on sand, gravel, and crushed stone would be in contravention of section 3 of the act. No further testimony was offered with respect to this issue. Complainant further stated that "the position of the Illinois Slag & Ballast Company is identical with the position of the crushed stone operators within the Chicago district." The evidence in regard to crushed stone, sand, and gravel will be hereinafter discussed. Furthermore, No. 2900 and No. 20006 involve not only switching rates within the district, but also closely related line-haul rates on interstate traffic moving between points adjacent to the district and between certain of those points and points within the district. The general investigation having been restricted to rates covering switching movements, no testimony was presented with respect to line-haul rates. Therefore, line-haul rates will not be considered or further discussed herein, other than to say that the carriers should give consideration to a realignment of such related rates in harmony with the findings hereinafter made with respect to switching rates. The complaint in No. 20006 will be dismissed.

Illinois Commerce Commission Dockets Nos. 17513, 17250, and 71269, and Public Service Commission of Indiana Cause No. 8939, involving the intrastate switching rates on some of the commodities within those respective States, were heard with the general investigation. Representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana cooperated in the supervisory field work entailed, as well as in the conduct of the hearings and the oral argument. This cooperation has been of substantial aid in the development of the record herein. Their views differ in some respects from the conclusions herein expressed.

CHICAGO SWITCHING DISTRICT

The boundaries of the Chicago district as defined in Agent Galligan's tariff I. C. C. No. 98[4] are described in Appendix A hereto. The district is approximately 40 miles in length and from 7 to 15 miles wide, and is densely populated. It covers an area larger than any other switching district in the country, comprising over 600 square miles, and is served by 35 railroads, which maintain a network

[4] Also in Illinois Commerce Commission tariff No. 43 and Indiana Public Service Commission No. 18.

of more than 5,000 miles of track within the boundaries of the district serving over 4,000 private industries. The Manufacturers' Association of Chicago Heights urges that the boundaries of the district be extended to include Chicago Heights, a point approximately 8 miles beyond the southern boundary of the district, now generally taking the Chicago district rates, or, in the event the district is not extended, it urges that the present competitive rate relationship be maintained. The city of Chicago Heights took no part in the hearings, but its counsel filed exceptions to the proposed report and also appeared at the oral argument. The Chicago & Eastern Illinois Railroad, which serves Chicago Heights, also contends for the inclusion of this industrial center within the switching limits. This feature will be hereinafter further discussed.

HISTORY OF SWITCHING RATES WITHIN THE DISTRICT

Prior to August 1, 1911, the rates, charges, and practices of the carriers covering switching services within the district were in a chaotic condition. Individual tariffs were then published by each carrier naming rates local to its line and based upon its own local conditions. No joint rates were in effect. During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke, and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents, respectively, minimum 60,000 pounds.

Some of the carriers conceded that exceptions to the proposed all-commodity basis should be made in the case of waste materials, such as slag, cinders, quarry, strippings, etc., without commercial value, the accumulation of which at industries impedes the operation of the plant and is generally regarded as a nuisance. In addition to the foregoing the Chicago & Illinois Western desires to make an exception of tar products, due, as alleged, to the imminent loss of the traffic if any increase is made in the present rates. The shippers

generally favor an all-commodity basis, but most of them are opposed to any increases in their present rates.

COST STUDY

Originally, as appears from the foregoing, the carriers endeavored to realign the rates on iron and steel articles only. We thereupon, by notice of October 25, 1926, requested that they prepare and submit statistics relating to the shortest, longest, and average hauls on iron and steel articles within the district, to be accompanied by detailed cost data. The information called for is set forth in Appendix B. The request was later changed to include all commodities embraced in the 69 classes provided for in the carriers' annual reports to the commission. Pursuant thereto the required statistics were compiled on 42,666 cars moved in September, 1926.

Fifteen of the carriers operating within and adjacent to the Chicago switching district and between that district and Chicago Heights collaborated in a joint cost study of the switching movements originating and terminating within its boundaries. This study was introduced upon our request without restrictions as to the specific carriers to be included. The study was based upon the Coverston-Saur formula, briefly described hereinafter, and embraced seven trunk lines and eight switching and terminal roads, hereinafter collectively called the study roads, as follows:

Trunk lines

Chicago, Burlington & Quincy Railroad
Chicago & North Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island&Pacific Railway
Elgin, Joliet & Eastern Railway
Illinois Central Railroad
Pennsylvania Railroad

Switching and terminal companies

Baltimore & Ohio Chicago Terminal Railroad
Belt Railway of Chicago
Indiana Harbor Belt Railroad
Chicago & Illinois Western Railroad
Chicago Short Line Railway
Chicago, West Pullman & Southern Railroad
Illinois Northern Railway
Pullman Railroad

The study covers carload movements only, and segregates the expenses incurred thereon into three general classes, namely, clerical, switching, and car detention or maintenance. Taxes and return on investment are provided for by the employment of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.

Clerical.—This expense represents the cost incurred to prepare records at the point of origin and destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each ter-

minal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.

Switching.—This expense, concisely, is the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic, and general expense. The total switching expense is reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinctive parts make up the switching service as a whole, and are designated "elements of service." All cars moving over a certain route normally receive the same elements of service peculiar to that route. The total cost per car of all elements of service embraced in a given route are combined under an index number. The respective index cost is then assigned to each car moving over the same route.

Car detention.—This expense embraces the maintenance of freight-train cars inclusive of an apportioned amount of superintendence, maintenance, and general expenses. The total car-detention expense is reduced to the cost per serviceable-car day, which is applied to each car for every day that it is in switching service.

Operating ratio.—The cost-study formula uses an operating ratio of 66.67 per cent, which approximates the ratio of 67.4 said by the carriers to be necessary for the railroads of the country to earn 5.75 per cent upon their investments as a whole. The carriers herein contend for a ratio lower than 66.67 per cent, whereas the shippers contend for a higher ratio.

While the above formula has been the basis of cost studies presented in previous switching cases, its application in these proceedings apparently is the most elaborate and comprehensive to date. The study was extended to each one of the 69 commodity classes for one, two, and three line hauls segregated between interstate, intrastate Illinois, and intrastate Indiana. The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August, and October, 1927. The unit costs so determined were then applied to 26,166 cars, or 61.33 per cent of those embraced in the traffic analysis as of September, 1926, this number having moved wholly over the study roads during that month. These cars are hereinafter referred to as study cars in contradistinction to those not included in the study, and which are designated as nonstudy cars. The foregoing also applies to 638 additional study cars which moved wholly over the study roads between Chicago Heights and the district during September, 1926.

The following tables, prepared from the carriers' exhibits, show the total traffic inclusive of study and nonstudy cars, segregated as above described except as to commodities:

Study and nonstudy cars	Interstate Cars	Interstate Per cent	Intrastate, Illinois Cars	Intrastate, Illinois Per cent	Intrastate, Indiana Cars	Intrastate, Indiana Per cent	Total Cars	Total Per cent
Chicago switching district:								
One-line haul—								
Study	7,573	17.75	1,951	4.57	2,426	5.69	11,950	28.01
Nonstudy	595	1.39	7,017	16.45	134	.31	7,746	18.15
Total	8,168	19.14	8,968	21.02	2,560	6.00	19,696	46.16
Two-line haul—								
Study	5,472	12.82	5,853	13.72	158	.37	11,483	26.91
Nonstudy	1,958	4.59	4,257	9.98	11	.03	6,226	14.60
Total	7,430	17.41	10,110	23.70	169	.40	17,709	41.51
Three-line haul—								
Study	803	1.89	1,930	4.52	....	...	2,733	6.41
Nonstudy	793	1.85	1,735	4.07	....	...	2,528	5.92
Total	1,596	3.74	3,665	8.59	....	...	5,261	12.33
Total (study)	13,848	32.45	9,734	22.82	2,584	6.06	[1] 26,166	61.33
Total (nonstudy)	3,346	7.84	13,009	30.49	145	.34	[2] 16,500	38.67
Grand total	17,194	40.29	22,743	53.31	2,729	6.40	42,666	100.00
Between Chicago switching district and Chicago Heights:								
Two-line haul—								
Study	38	2.94	354	27.41	....	...	392	30.35
Nonstudy	56	4.33	338	26.16	....	...	394	30.49
Total	94	7.27	692	53.57	....	...	786	60.84
Three-line haul—								
Study	135	10.44	87	6.74	....	...	222	17.18
Nonstudy	79	6.12	156	12.07	....	...	235	18.19
Total	214	16.56	243	18.81	....	...	457	35.37
Four-line haul—								
Study	6	.46	18	1.39	....	...	24	1.85
Nonstudy	0	.00	25	1.94	....	...	25	1.94
Total	6	.46	43	3.33	....	...	49	3.79
Total (study)	179	13.84	459	35.54	....	...	638	49.38
Total (nonstudy)	135	10.45	519	40.17	....	...	654	50.62
Grand total	314	24.29	978	75.71	....	...	1,292	100.00

[1] Fifteen study roads.

[2] Fifteen nonstudy roads.

The average costs, hauls, and loading, as compiled by the carriers, based upon the study cars and shown in their exhibits are as follows:

Switching costs	Cars	Average haul per car	Average loading per car	Average operating expense		Average total cost based on operating ratio of 66.67 per cent	
				Per car	Per 100 pounds	Per car	Per 100 pounds
Between points in Chicago switching district:		*Miles*	*Pounds*		*Cents*		*Cents*
One line	11,950	13.19	86,250	$15.94	1.9	$23.92	2.8
Two line	11,483	21.32	84,145	18.92	2.2	28.39	3.4
Three line	2,733	26.53	85,405	21.52	2.5	32.29	3.8
Between points in Chicago and Chicago Heights districts: [1]							
Two line	392	31.66	75,171	18.77	2.5	28.15	3.8
Three line	222	33.42	74,416	21.62	2.9	32.42	4.4
Four line	24	41.94	84,994	21.57	2.5	32.35	3.8

[1] No one-line hauls involved. In the record the movement over the Chicago Heights Terminal Transfer Railway and the Chicago & Eastern Illinois Railway was dealt with as a one-line movement and for the purpose of this case will be so considered.

Cost studies of this nature may be considered as indicative only. In this case the exactness of the cost figures has been questioned alike by the carriers, which had the burden of compiling them, and by the shippers who made an extensive analysis of them. The effect of the criticisms of the carriers would be to increase the costs as originally determined, and those of the shippers would have the opposite effect.

The most important criticisms of the carriers may be summarized as follows:

1. The studies were made during the summer and fall periods without allowance being made for the increased costs incurred during the winter months. This is based upon an alleged check indicating that less cars were handled and more fuel consumed per month during December, January, and February than in any of the other nine months of the respective years 1925, 1926, and 1927. The costs were thereby understated approximately 10 per cent, according to the carriers' estimate.

2. The cost figures reflect the level of wages in 1927. Later increases granted and pending have not been included.

3. No allowance was included by the trunk-line study roads for the transportation of locomotive fuel over the respective roads' own lines or by the three large belt lines for distributing coal to their respective fuel stations.

4. No part of the maintenance expense of main tracks to cover their use in the switching service was included in the switching costs.

5. Costs borne by the intermediate and the terminating roads for the return of empty cars were omitted.

6. The operating ratio of 66.67 per cent, although suggested in the Coverston-Saur formula, is objected to by the carriers as being too high.

On the other hand the shippers point to other infirmities, both as to the theory and the application of the carriers' formula, of which the following are considered the most important, and would tend to lower the costs:

1. On the basis of the serviceable-car day detention, a portion of the maintenance expenses of freight-train cars, or so-called car detention, was allocated to the cost of switching. The shippers' primary objection to this is that the use of the serviceable-car day as a proper basis for this apportionment is erroneous because it comprehends only a time factor, no consideration being given to wear and tear from use as measured by mileage. This is on the ground that repairs, the most important item of maintenance, result principally from damage done when a car is in motion and not

while standing still. The shippers also point out that the responsibility for empty movements as between road and switching services has not been carefully observed, resulting in both over and understatements in the costs, and that it is erroneous to include private cars in the computation of the unit cost per car-day for maintenance, inasmuch as the carriers perform only running repairs on private cars except in case of accident.

2. Failure to determine the distinct engine-hour cost for switching and weighing cars at industries because of the use of lighter engines in those services attended by lower engine-hour costs and because that service is performed on tracks owned and maintained by the industries in most instances.

3. The determination of unit costs based upon movements during a test period of one week in 1927 on each respective carrier and the application of those unit costs to traffic materially different in volume in another period or during September, 1926, tends to distort the final results.

4. Failure to reduce the cost by demurrage and weighing charges collected results in an overstatement of the cost as a basis for a distinct transportation rate where as here the expenses attached to those services are included in the cost.

5. Inclusion of the Elgin, Joliet & Eastern hereinafter referred to as the E., J. & E., as a study road operating principally outside of the Chicago district tended to inflate the results of the study which should have been confined strictly to roads within that district.

6. That the operating ratio of 66.67 per cent, as suggested by the formula, is too low.

7. General criticism was made of the carriers' operating methods and the surrounding conditions as affecting the costs. These relate to circuity of movements, operating methods and restrictions at interchange points, lack of trackage rights to facilitate hauls; and failure to perform joint switching in some instances where two or more carriers serve the same plant.

Representatives of the Illinois Commerce Commission submitted testimony to show that the costs as compiled by the carriers are overstated due to the inclusion of time prior to the actual assignment of cars to a particular switching movement, and also subsequent to their release and the lapse of sufficient time to return cars to a carrier's yard. They also agree with the shippers' contention that the costs should have been reduced by the amount of demurrage collected.

Other less important criticisms were made, but it is not deemed necessary to discuss them in detail.

The following table summarizes and compares the results of the cost study revised to the basis of the respective claims of the carriers and shippers:

	1,950 cars, one-line		11,483 cars, two-line		2,733 cars, three-line	
	Carriers	Shippers	Carriers	Shippers	Carriers	Shippers
Operating expenses (study)	$190,552	$190,552	$217,317	$217,317	$58,829	$58,829
Net undercharge	$8,531	.....	$12,255	.....	$8,093	.....
Net overcharge	.....	$31,653	.....	$33,042	.....	$7,412
Revised operating expenses	$199,083	$158,899	$229,572	$184,275	$66,922	$51,417
Operating expenses per car	$16.66	$13.30	$19.99	$16.05	$24.49	$18.81
Operating expenses per 100 pounds...cents	1.93	1.54	2.38	1.91	2.87	2.20
Total cost per car:						
Based on operating ratio, 56.67 per cent	$24.99	$19.94	$29.99	$24.07	$36.73	$28.22
Based on operating ratio, 76.80 per cent	$21.69	$17.31	$26.03	$20.90	$31.88	$24.50
Total cost per 100 pounds:						
Based on operating ratio, 66.67 per cent .....cents	2.90	2.31	3.56	2.86	4.30	3.30
Based on operating ratio, 76.80 per cent .....cents	2.52	2.01	3.09	2.48	3.73	2.87

The above differences in results are attributable, in the main, to the disagreement between shippers and carriers as to the theory and the application of the carriers' cost formula relative to the allocation of the maintenance of cars (car detention); the inflation of averages for the study period of September, 1926, by the carriers' application of higher element-of-service costs developed on specific movements of relatively low volume during the test period, limited to one week in 1927, to the same elements of service performed on similar movements of greater volume during September, 1926, without a compensating movement of higher volume in the latter period at the lower test period costs developed on other elements of service; the carriers' failure to develop distinct costs for industrial switching, weighing, etc., because of lighter engines which it is alleged are employed with less expense than in other switching service; and the variation between the operating ratio of 76.8 per cent proposed by the shippers and the operating ratio of 66.67 per cent suggested by the formula and considered as maximum by the carriers. Further discussion of the cost study herein will be confined to the above features.

As to car detention which embraces the combined expenses of car repairs, depreciation, and retirements, the parties admitted that there has been no precise or even satisfactory basis yet developed for allocating that expense to particular services.

The car-maintenance expenses are not segregated in the carriers' accounts between road service and yard service, and there are no means of arriving at the amount of these expenses chargeable to a particular service, such as that here involved except upon the basis

of an estimate. The carriers' method of estimating these expenses, which rests upon definitely ascertainable facts, is to divide the total amount of the car-maintenance expenses on the entire road during the year by the total serviceable-car days of the cars in all services, to obtain an average car-maintenance expense per serviceable-car day, which is then applied to the number of days the cars are detained in intradistrict switching service, as the basis for arriving at the amount of the maintenance expense chargeable to the cars in that service. This is a strictly time factor.

The shippers, as well as representatives of the Illinois commission, criticized the carriers' method on the ground that it makes the amount of these expenses directly proportionate to the number of days involved, whereas it is claimed that these expenses accrue partly on a time basis and partly on a use basis. They inject the factor of 65 per cent as representative of use and which they obtained from the American Railway Engineering Association bulletin for March, 1923. They apply that factor to the expense of car repairs after adding an apportioned part of the other maintenance accounts and arrive at an amount which they attribute to use and which is then reduced to an amount per car-mile. The switching service is then charged with the amount per car-mile determined by use of constructive car-miles within the district based upon estimates of 20, 40, and 50 miles for one, two and three line hauls, respectively. In addition to the foregoing the shippers approximate and add for damage to cars within the district the amounts of 15, 30 and 45 cents per car for one, two, and three line hauls, respectively. Under the shippers' method the car detention costs as determined by the carriers would be reduced $21,167, $19,536, and $5,005 for one, two, and three line hauls, respectively.

The carriers assert that the shippers' formula fails to provide for the necessary detention of an unassigned supply of cars within the district to meet the varying demand from day to day; however, the carriers also contend that their study does not fully provide for that expense, and claim that the costs as originally calculated are understated thereby. An examination of the formula relied upon by the shippers for their distribution of the expense for car detention as between use and nonuse discloses that the factor of 65 per cent referred to above is the result of a study made more than 10 years ago, during 1915, 1916, and 1917, and furthermore it does not appear to have had any particular relation to the locality under consideration or to any terminal or switching service. The shippers also uniformly applied the factor of 65 per cent to the expense for car repairs increased by proportions of other indirect expenses to arrive

at the amount attributable to use. The original formula which they adopted attributes 65 per cent to use in relation to the direct expense of car repairs only. It assigns as low as 10 per cent to use for certain other accounts included by the shippers and the entire amount of other accounts to nonuse, all of which were apportioned 65 per cent to use by the shippers. The cost of 64.352 cents per car-day for detention is based upon serviceable car days only under the carriers' formula. In reducing to a mileage basis the 65 per cent portion of that cost the shippers use 30 miles per day, which represents the average road mileage only of total serviceable and unserviceable cars, home and foreign, on the lines of all Class I railroads during the year 1926, excluding switching and terminal carriers.

It is obvious that the bases employed by the shippers in both segregating and assigning a portion of car-detention cost to use are either too remote or too abstractive to produce any more convincing results than those of the carriers. The basis of 30 car-miles per day in a terminal is constructed solely upon basis of road mileage and bears no relation to the use of equipment in terminals. It should not be accepted as an equitable measure of the cost of car detention for the service under consideration. While, on the other hand, the shippers question the accuracy of the results obtained by the carriers through the employment of a purely time factor, it would appear from this record that time is the only common denominator between road and terminal services.

Intradistrict switching is a complete service in and of itself, having no relation to any road-haul movement. The car must be furnished by the switching carrier when required for this service. If the particular switching carrier has no car of its own, it must provide one of foreign ownership, but there is no per diem reclaim in connection with this class of switching service. When called for, the empty car must be taken by the switching carrier from its own yard or the foreign line connection and spotted at the originating industry for loading. When loaded it must be moved through the terminal and spotted at the destination industry, and when unloaded the empty car must be returned to the storage yard or to the foreign line connection. The use of the car in this service, therefore, doubtless is greater than the use in any other class of switching service, involving, as it does, both loaded and empty movements and two complete terminal services.

The shippers criticized the carriers' study relative to weighing and industry switching services on the grounds that separate engine-hour costs were not developed for those distinct services. To some degree those services involve the use of lighter engines attended with less operating cost than the heavier engines in other switching services:

In the case of industry switching the service is performed not only with lighter engines but to some extent upon property owned and maintained by the respective industry. The shippers are in agreement with the carriers, however, that there is no adopted practice of assigning only the lighter engines to industry switching and weighing, and that the heavier engines also perform those services. The carriers assert that, where practicable, separate engine-hour costs were developed as to locality, but not upon the basis of elements of service, due to the fact that no particular element of service is confined to a specific type of engine. It is apparent, therefore, that it would be impracticable, if not impossible, to make such a refinement. Neither does it seem practicable to segregate engine-hours between performance on carrier property and on industry property.

The shippers in support of their criticism pursued a method of segregation by which they developed alleged overcharges of 79 cents per car inclusive of the E., J. & E. and $1.03 per car exclusive of that road. No attempt will be made to explain the detail of that method, except to say that it converts the averages per engine-hour developed by the carriers for all switching, intradistrict and other, for the 15 respective study roads into common general averages for the respective elements of service embraced in the switching operation, inclusive of weighing and the industrial switching. An estimate of $10 per engine-hour was then arbitrarily assigned alike to weighing and to industrial switching in substitution of averages of $14.15 and $14.79, respectively, developed by the carriers. The resultant decrease in those two services was allocated to the various other switching services proratably, and the percentages of the increases and the decreases thus occurring in the repective services were computed. The shippers then set up the cost of intradistrict switching only, classified into its various elements. By this segregation the relationship of the various items changed, which prevented the decrease in weighing and industry switching from being wholly absorbed by the other items to which the decrease was assignable on basis of the percentages obtained as above explained. The shippers' premise is questionable, due not only to their application of the estimate of $10 per engine hour to all weighing and industry switching, but also to the fact that they fail to classify those services with reference to the type of engine used or whether performed upon carrier or industry property, which the shippers contend is the alleged disability in the carriers' study.

The evidence is far from convincing in regard to the operating ratio required to expand the operating costs so as to embrace taxes and return on investment. The carriers' study is vague in this

respect. They fail to name any definite figure which would bear a distinct relationship to the carriers and the particular traffic under consideration. They make certain compilations which embraced the railroads of the country as a whole, and arrived at an operating ratio of 67.4 per cent, which they say would produce a return of 5.75 per cent upon investment. The ratio of 67.4 per cent approximates the ratio of 66.67 per cent suggested in the Coverston-Saur formula, which they contend is too high, but, as stated, they name no definite lower figure. As indicated, 67.4 per cent represents a composite ratio embracing the railroads of the country as a whole. It reflects the diversity of earning power of the numerous investments affected by favorable and unfavorable operating conditions, location, and tax requirements throughout the country. The carriers claim that a ratio lower than 66.67 per cent would be required to be representative of the conditions which obtain in the instant case restricted, as it is, to the confines of a single congested terminal in and around Chicago, one of the greatest of industrial centers, with high taxes due to high land values, and difficult operating conditions due to congestion."

The shippers in support of their contention that the ratio of 66.67 per cent is too low showed that with an average operating ratio of 70.24 per cent the average return for nine switching roads in the district for the years 1925, 1926, and 1927 was 6.36 per cent based upon investment, and 8.33 per cent based upon our tentative valuation as to eight and the final valuation as to one of those roads. It is also shown that approximately 40 per cent of the strictly intradistrict switching expenses and 15 per cent of all switching expenses within the district is attributable to industry switching which is performed to some degree upon industry property. The purpose of this showing is to indicate that with regard to such portion of the switching as is performed on property owned by industries, an operating ratio should not comprehend either taxes or return on investment. In view of the foregoing the shippers claim that the average operating ratio of 70.24 per cent above described might well be increased to 72 per cent to earn 5.75 per cent on investment and 76.8 per cent to earn 5.75 per cent on the tentative valuation. The ratio of 70.24 per cent comprehends all operations of the nine roads embraced in the shippers' exhibit, whereas the intradistrict switching amounts to only about 5 per cent of the total operations. In other words, the intradistrict switching constitutes somewhat less than 5 per cent of all switching, but is largely made up of industrial switching, which admittedly is the most expensive of the switching services, and the ratio of 70.24 per cent does not reflect the results of performing intradistrict switching because it is largely influenced

by other less costly switching operations. The returns of 6.36 per cent on investment and 8.33 per cent on our valuation also include, in some measure, the results from the joint use of the facilities of terminal carriers by tenant companies accounted for in the joint-facility accounts. Those accounts have no place in the cost-finding data as compiled in these proceedings. They are merely cross-entries between carriers and do not affect the actual cost of handling traffic from a cost-finding standpoint. They do, however, enter into the accounts so as to affect a composite operating ratio designed to show the results of operating a particular property under all of the peculiar conditions of operation local to that property. If the property is used extensively by other lines and the accounts contain large net credits for rents and for operating expenses, as is the case in respect of the jointly owned and operated companies included by the shippers in their illustration, then those credits are in a large measure occasioned by terminal operations under arrangements bearing no relation to the intradistrict switching. Neither the operating ratio nor the returns on investment so arrived at are indices of the compensatory character of the rates on the distinct or segregated part of the traffic which is involved in these proceedings.

If full effect were given to the modifications submitted by both carriers and shippers, the net decrease in the originally submitted costs would be 2.2 mills per 100 pounds for the average one-line haul of 13.19 miles, 2.2 mills for the average two-line haul of 21.32 miles, and an increase of 0.3 mill per 100 pounds for the average three-line haul of 26.53 miles. Those modifications depend principally upon the correctness of the theory and application of the formula used to ascertain the car-detention costs. This leads to a comparison of those approximate costs with the revenue produced by the present and the proposed rates, respectively.

REVENUE

As previously stated, the present Lowrey rates are 2.5, 2.5, and 3 cents for one, two, and three-or-more-line hauls, and the rates proposed are 3, 3.5, and 4 cents for the same respective hauls. Those rates, however, lose their significance in certain instances due to extensive movements on exceptions either over or under the standard Lowrey basis. This is indicated by an examination of the weighted-average revenues shown in the following summarized table compiled from the carriers' exhibits. Those exhibits reflect the results of an extensive analysis of traffic by classes of commodities, moved on the 15 study roads during September, 1926, in cars covered by the cost study as well as in nonstudy cars.

Average revenue, study and nonstudy cars

Basis		One-line			Two-line			Three-line		
Present	Proposed	Tons	Revenue per 100 pounds		Tons	Revenue per 100 pounds		Tons	Revenue per 100 pounds	
			Present	Proposed		Present	Proposed		Present	Proposed
Interstate:	Interstate:		*Cents*	*Cents*		*Cents*	*Cents*		*Cents*	*Cents*
Lowrey	Lowrey	63,605	2.5	3.0	200,313	2.5	3.5	12,611	3.0	4.0
Over Lowrey	Over Lowrey	21,670	3.8	3.9	63,813	4.8	5.0	54,974	5.4	5.4
Over Lowrey	Lowrey	214,303	2.9	3.0	.....	..	..	.....	..	..
Under Lowrey	Lowrey	14,715	1.8	3.0	26,199	1.4	3.5	200	2.0	4.0
Under Lowrey	Under Lowrey	33,425	1.5	2.4	12,343	2.2	2.2	4,605	2.6	3.1
	Total	347,718	2.7	3.0	302,668	2.9	3.8	72,390	4.8	5.0
Intrastate, Illinois:	Intrastate, Illinois:									
Lowrey	Lowrey	57,793	2.5	3.0	320,735	2.5	3.5	63,012	3.0	4.0
Over	Over	2,461	3.3	3.6	23,638	3.6	4.2	15,508	4.2	4.7
Over	Lowrey	725	3.0	3.0	2,421	3.3	3.5	.....	..	..
Under	Lowrey	104,140	1.7	3.0	59,695	1.3	3.5	17,333	2.6	4.0
Under	Under	190,120	0.9	1.0	4,434	1.6	2.3	56,675	2.4	3.5
	Total	355,239	1.4	1.9	410,923	2.4	3.5	152,528	2.9	3.9
Intrastate, Indiana:	Intrastate, Indiana:									
Lowrey	Lowrey	16,073	2.5	3.0	2,760	2.5	3.5	.....	..	..
Over	Over	3,757	5.0	5.0	4,731	5.2	5.2	.....	..	..
Over	Lowery	67,053	2.9	3.0	.....	..	..	.....	..	..
Under	Lowery	20,166	1.8	3.0	.....	..	..	.....	..	..
Under	Under	956	1.1	1.2	.....	..	..	.....	..	..
	Total	108,005	2.6	3.1	7,491	4.2	4.6	.....	..	..
	Grand total	810,962	2.1	2.5	721,082	2.6	3.6	224,918	3.5	4.2
Lowrey rates compared		.....	2.5	3.0	.....	2.5	3.5	.....	3.0	4.0

The weighted-average revenue, hereinafter referred to as revenue, on the present basis is 2.1, 2.6, and 3.5 cents, as compared with the corresponding Lowrey rates of 2.5, 2.5, and 3 for one, two, and three-or-more line hauls, respectively. On the proposed basis for the same traffic the revenue would have been 2.5, 3.6, and 4.2 cents as compared with the proposed Lowrey rates of 3, 3.5, and 4 cents, respectively. It will be observed that when all the traffic is considered, the amount of increase on the one-line and three-line hauls are in fact less than indicated by the proposed changes in the Lowrey rates. While both interstate and intrastate traffic contribute to this deficiency, the principal factors are the conditions which surround the 1-line hauls within Illinois. This is manifest by the comparatively large amount of tonnage that now moves and would move in 1-line hauls intrastate in Illinois on exceptions under the Lowrey rates. As to the 3-line movement, the excess revenue over the present Lowrey rate is undoubtedly attributable to the 3-line interstate traffic which originated on the E., J. & E. and to some extent outside of the district. That carrier is not a party to the Lowrey basis. It publishes only line-haul rates somewhat higher than the Lowrey basis.

The total traffic included in the above table amounted to 1,756,962 tons. Of that tonnage, 41.94 per cent moved on Lowrey rates, 27.04 per cent over, and 31.02 per cent under those rates. If the proposed basis had been in effect 71.93 per cent thereof would have moved on the Lowrey rates, 10.85 per cent over, and 17.22 per cent under those rates. Due to the elimination of a part of the exceptions, both over and under the Lowrey basis, there would be a substantial increase in the volume of movement on the strictly Lowrey rates, but no increase in the weighted-average revenues.

REVENUES COMPARED WITH COSTS

Manifestly the standard rates, present or proposed, are not true indices of the revenues for the purpose of comparing unit costs. The unit costs being based upon averages of the actual cost of the whole operation should be compared with like averages of the actual revenue received on basis of the standard rates as modified by exceptions to those rates.

The weighted-average revenue as shown in the foregoing table is subject to further reduction due to the inclusion therein of revenue derived from traffic moving over the E. J. & E. within, and to and from the district at rates above the Lowrey basis. While the record does not definitely indicate, it may be assumed with reasonable certainty that the interstate and the intrastate Indiana movements on rates over both the present and proposed Lowrey basis consist of

traffic over that road. If that traffic were eliminated it may fairly be assumed that the weighted-average revenues at the proposed Lowrey rates of 3, 3.5, and 4 cents for one, two, and three-or-more line hauls, respectively, would be somewhat reduced. On the other hand, the record does not indicate that the inclusion of the E., J. & E. has inflated the unit costs, and in fact one of the exhibits filed by the shippers indicates that the engine-hour costs are lower with that carrier included than if it is excluded. By use of those unit costs the following comparison is made with the present and proposed rates and weighted-average revenues:

	Present				Proposed				
	Rate	Weighted average revenue	Operating expense	Ratio, operating expense to weighted average revenue	Rate	Weighted average revenue	Operating expense	Ratio, operating expense to weighted average revenue	Total cost based on 70 per cent ratio
	Cents	*Cents*	*Cents*	*Per cent*	*Cents*	*Cents*	*Cents*	*Per cent*	*Cents*
One line	2.5	2.04	1.9	93.14	3.0	2.45	1.9	77.55	2.71
Two line	2.5	2.37	2.2	92.83	3.5	3.45	2.2	63.77	3.14
Three line	3.0	2.89	2.5	86.51	4.0	3.81	2.5	65.62	3.57
Average (not weighted)	..	...	..	90.83	..	...	..	68.98	...

It is quite evident from the high ratios of operating expenses to the revenues that the present rates are too low. The record contains no suggestions of operating ratios that approach as high as 86.51 per cent, which is the lowest ratio indicated above at the present rates. The highest ratios suggested by the shippers range from 72.20 to 76.80 per cent, and the highest suggested by the carriers is 66.67 per cent. Under the proposed rates the ratios of operating expenses to the weighted-average revenues would be 77.55, 63.77, and 65.62 for the one, two, and three-or-more line hauls, respectively. If the total costs were uniformly based upon an operating ratio of 70 per cent, which is midway between those contended for by the carriers and shippers, the productivity of the rates as represented by weighted-average revenue would be 2.71, 3.14, and 3.57 for the respective hauls. Therefore, if applied to all the traffic proportionately, it would require rates of 3.31, 3.18, and 3.74 cents, respectively, to produce those weighted-average revenues. It thus appears that, notwithstanding the general desire for a uniform rate basis and the extent to which that basis is observed untrammeled by distance within an area as large as the Chicago switching district, there is a considerable tonnage that moves, and which probably would continue to move, on exceptions lower than the uniform rate

basis. The influence of the comparatively large movement taking the Lowrey rates is seen in the constructed 1-line rate of 3.31 cents, which is 0.31 cent over the proposed rate of 3 cents. It is apparent that those movements at the lower rates make serious inroads on the carrier's revenues.

The record herein contains no convincing evidence as to what may be a proper operating ratio for this intradistrict traffic. As previously stated, the carriers' formula suggests a ratio of 66.67 per cent, but their cost expert contended for a lower ratio in view of the much higher tax value of the properties within the switching district, as indicated by the fact that the average tax valuation per mile of road for the trunk lines included in the study is five times greater in Cook County, which embraces the Chicago switching district, than the tax value per mile of road outside of Cook County in the State of Illinois. Neither do the earnings of the nine switching roads referred to by the shippers afford a reliable guide as to what a proper operating ratio may be, for the reason that of the total traffic switched by the study roads 95 per cent is other than intradistrict traffic. In other words, less than 5 per cent of the total traffic switched requires two complete terminal services, as compared with one for road-haul cars originating or terminating within the district, and none for road-haul cars passing through the district. Furthermore, it involves property of greater tax value and very extensive use of that property as indicated by the average hauls of 10.8 miles for one line, 21.6 miles for two line, 24.5 miles for three line, and 18 miles for one, two, and three line hauls combined. Intradistrict switching is a complete service in and of itself, involving no part of a line-haul rate, switching absorptions, or per diem reclaims, and the rate therefor should be fully compensatory. Therefore, in the absence of any evidence of record as to the amount of the taxes and joint-facility rents, and the value of the property used in intradistrict switching, the question of the proper ratio to apply to the ascertained expenses to develop such a rate resolves itself very largely into a matter of opinion.

A detailed analysis of the tonnage handled during the test periods divided as to one, two, and three-or-more line hauls, and for both interstate and intrastate movements, appears in Appendix C hereto.

On argument counsel for the shippers again criticized the various cost items as being excessive, and compared the cost figures with those developed in connection with cost studies undertaken at various other terminals. Counsel further contended that before permitting any increases in the switching rates the carriers should be required to undertake improved methods of handling this switching traffic, such as the elimination of unduly circuitous routes, restricting the points of in-

terchange, and more liberal use of trackage rights, etc. The record leaves no doubt that there is need for improvement in the handling of this vast switching business, and we can not too strongly urge upon the carriers the necessity for prompt study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.

COMMODITIES

Much testimony was submitted by various parties interested in the rates on particular commodities with a view to showing that no increases would be justified in their respective rates. Some of the contentions advanced in connection with a number of the commodities moving in large volume are briefly set forth below.

Grain.—Wheat, corn, oats, and other grains move in large part, both interstate and intrastate within Illinois, on exceptions under the Lowrey basis with some movement intrastate in Illinois on Lowrey rates and rates over that basis. It is proposed by the carriers to place grain generally upon the all-commodity basis, which would result in an increase in the grain revenue. Based upon the traffic analysis of September, 1926, the principal grain movement consists of corn in 2-line hauls both interstate and intrastate in Illinois, although there is a substantial intradistrict movement of all grains in one, two, and three-line hauls. This greater movement of corn apparently is attributable to the extensive manufacture of corn products within the district and to the facilities for drying wet corn for market with which the Chicago district is said to be especially well equipped. The latter induce some movement between elevators and the drying plants. The traffic analysis shows no movement of any grain within the Indiana section of the district.

The carriers' proposed adjustment originally did not include the rates on grain, but at the later hearings a general readjustment of these rates to the full all-commodity basis was proposed. All grain rates are published in the tariffs of individual lines, and the carriers in one of their later exhibits show only the rates over the lines specified therein, either between points on the same line or between an industry or team track on the line and a point of interchange with a connecting line. In so far as team tracks are concerned, it was stated by one of the carriers' witnesses that in order to restrict the use of those tracks the Lowrey basis is not observed and that the rates shown between a team track and a connecting line are proportional rates to be added to the connecting-line rate to make the through rate. This leaves the record without any data as to the

present two and three line grain rates from industry to industry upon which to base a conception as to the significance of the proposed change on grain to the all-commodity basis, except what may be gathered from the average revenues derived from the present rates under the Lowrey basis as compared with the proposed rates on the all-commodity basis. The following comparison compiled from that source is nevertheless illuminating:

Hauls	Interstate			Intrastate, Illinois			
	Tons	Average haul	Present average revenue [1]	Tons	Average haul	Present average revenue [1]	Proposed Lowrey rate
		Miles	*Cents*		*Miles*	*Cents*	*Cents*
One line:							
Wheat	....	....	....	3,868	11.52	0.7	3.0
Corn	1,383	13.49	0.7	3,373	12.14	1.3	3.0
Oats	64	10.00	1.0	451	4.95	1.2	3.0
Other grain	259	7.57	2.0	198	2.31	.8	3.0
Two line:							
Wheat	1,568	9.15	1.5	6,813	10.28	1.5	3.5
Corn	17,793	20.59	1.4	44,838	44.20	1.3	3.5
Oats	400	20.50	1.6	5,586	19.15	1.5	3.5
Other grain	160	19.20	1.8	2,005	18.20	1.4	3.5
Other mill products	377	20.05	1.9	451	13.51	1.7	3.5
Three line:							
Wheat	....	....	....	2,604	17.24	2.1	4.0
Corn	160	36.20	1.9	1,526	23.98	1.9	4.0
Oats	40	16.26	2.2	1,361	19.19	2.5	4.0
Other grain	....	....	....	478	26.19	2.3	4.0

[1] Per 100 pounds.

It will be seen that an increase in the present rates on grain to the proposed all-commodity basis would be a very considerable increase, but it also should be stated that the bulk of the grain within the district moves on lower rates than any other commodity except some comparatively short hauls of coke, packing-house products, and refuse material. On argument it was stated that the present rates are generally on a per car basis, varying in amount, but considerably below the Lowrey rates.

The testimony of the shippers concerned the manner of merchandising grain, total amount of available grain-storage facilities around Chicago, the amount of grain in storage on various dates, and the so-called reciprocal and proportional switching charges on inbound and outbound movements at Chicago compared with similar charges in various other switching districts, such as St. Louis and Kansas City, Mo., Minneapolis, Minn., and Omaha, Nebr. The importance of Chicago as a primary grain market is well established and requires no comment. The carriers point out that the compared charges per car in other switching districts brought into the comparison are either so-called reciprocal switching charges which are not in issue, or proportional charges which are incomplete unless combined with

other charges of that class to make the through cross-town charge, and further that the shippers' comparisons are unaccompanied by any showing of similarity of conditions. Only a limited number of the 1-line charges in other districts are exhibited, and these are unaccompanied by any showing of distance, or where distances are shown they involve a very short haul. Due to those infirmities the comparison is of little value.

The principal witness for the grain interests urged that the charges for the intradistrict switching of grain within the Chicago switching district should be absorbed by the carriers, that is, at least to the extent of one intradistrict switching service. This no doubt contemplates a switching service in addition to the service performed in direct connection with the inbound and outbound road haul, and apparently is predicated upon the theory that grain should be considered in transit on a line-haul rate until it reaches its final destination; that all such accessorial services should be considered in the nature of transit arrangements, the ultimate object being to equalize the situation of the consignee in Chicago who buys his grain after a complete delivery has been effected by the inbound carrier with a situation of the consignee who buys his grain so as to receive delivery in direct connection with the inbound road haul; and that the dealer who purchases wet corn should be permitted to accept delivery at one point and thereafter have the corn again transported within the district to a drying plant and returned without additional transportation cost. These propositions were all interlinked by the witness to the equalization of Chicago as a grain market in comparison with other cities classed as such, by stating that an additional charge for a purely intradistrict movement destroys the equalizing effect of the line-haul rate adjustments to and from Chicago as compared with other grain markets. That does not appear to be correct. All dealers or consumers in Chicago have the advantage of the flat Chicago rate inclusive of an initial delivery. They are also upon an equal basis with each other in so far as inbound or outbound transportation is concerned. The need for the additional intradistrict switching service is governed by the manner in which grain is bought and sold in the Chicago market and arises after initial delivery has been effected, or too late to avoid a movement in addition to the initial delivery. Consequently the elimination of the intradistrict charge is a merchandizing rather than a transportation problem, and is controllable largely by the dealers themselves.

The movement of wet corn to and from drying plants also involves a commercial rather than a transportation question. The original

price paid for wet corn generally is sufficiently below that paid for dry corn to provide for the cost of drying, and it may reasonably be assumed that it is known either when wet corn is shipped originally or when it first reaches Chicago that it will undergo a drying process. If initial delivery to an elevator or any place other than a drying plant is then requested, it must be for a commercial and not a transportation reason.

The need of those services is not within the knowledge of the carriers at a time when provision can be made in the line-haul rate to insure remuneration for their performance. Nor has it been shown that the line-haul rates are adequate to compensate the carriers for those additional services. It follows that the intra-district movements should not be considered in the light of transit arrangements nor as so-called reciprocal switching, as suggested by the shippers' witness. They constitute distinct services and justify distinct charges when rendered.

Coke.—This commodity was represented solely by the By-Products Coke Corporation of Chicago, located at South Chicago, Ill., which claims to be the largest producer in the country of coke for the general market. It carbonizes 1,500,000 tons of coal each year, and produces 1,250,000 tons of coke. In addition it owns and operates a blast furnace in South Chicago on the opposite side of the Calumet River from the coke plant. Yard tracks and scales are owned and maintained by the industry at its coke plant. The Chicago Short Line performs the switching at that point.

During the year 1926 the coke plant shipped 28,816 carloads of coke, light oil, ammoniacal liquor, and coal tar, of which 26,948 carloads were coke. The coke was distributed as follows: 5,050 carloads in 1-line hauls less than 1 mile in length; 12,099 carloads in 2-line hauls; and 9,799 carloads in 3-line hauls. The 1-line hauls were made in private cars for which no allowance is made. Of the 2-line hauls 6,120 cars were destined to points outside of the district. The carriers submitted traffic statistics for the month of September, 1926, only which show a total movement within the district of 6,716 cars. Measured by that month there must be a considerable movement of coke in addition to that of the By-Products Corporation. While that company estimated that 90 per cent of its coke moves intrastate, the carriers' statistics indicate that about 58 per cent of the total movement of coke in the district is interstate. These statistics for September, 1926, show that the 1-line hauls range from 1.3 to 11.97 miles, the 2-line hauls from 2 to 56.9 miles, and the 3-line hauls from 8.5 to 37.4 miles. The following table depicts the average distances of

those hauls and the weighted-average revenue at the present and proposed bases of rates:

	Cars	Average distance	Revenue per ton	
			Present	Proposed
Interstate:		*Miles*	*Cents*	*Cents*
One-line	3	[1] 7.00	50	60
Do	3,374	[1] 11.97	60	60
Do	37	[1] 11.97	12	12
Two-line	138	23.84	50	70
Do	12	46.82	73	87
Do	277	[1] 12.70	45	45
Total	3,841	....	..	..
Illinois:				
One-line	55	3.95	50	60
Do	478	5.94	50	40
Two-line	1,289	7.30	50	70
Do	14	12.79	71	88
Three-line	410	25.95	60	80
Do	78	28.24	76	92
Do	53	10.29	50	71
Total	2,327	....	..	..
Indiana:				
One-line	548	[1] 11.97	60	60
Total	548	....	..	...

[1] Actual distance.

An analysis of the movements shown in the above table indicates that much of this tonnage moves on rates which are considerably below the Lowrey basis.

The By-Products Corporation subscribes to a uniform basis of rates provided no increase is made in the present Lowrey rates. The testimony in protest of any higher rates refers to the resulting increase of approximately $170,000 per annum in its transportation charges on coke alone, to the use of private cars in the 1-line hauls for which it receives no allowance, and to certain elements of service contained in the carriers' costs which the shippers claim should be eliminated. The movement in private cars is intrastate, and at rates which are 10 cents per ton under the Lowrey basis.

This shipper is opposed to the arbitrary of 0.5 cent added for deliveries in the so-called outer belt lying in the extreme northern and northwestern sections of the district. It is also pointed out that a differential in some cases exists in favor of Evanston, Ill., as compared with points in the northern section of the district. To points around Deering, Ill., which is within the district, the rate on coke is $1.01 per ton, the same as to the farther distant point of Evanston, which is outside of the district.

Packing-House Products.—This testimony dealt almost exclusively with the short hauls within the stockyards district over the Chicago Junction Railway, which has divided its line into districts. Within

those districts are located plants between which there are movements of certain commodities. That carrier was not selected as one of the cost-study roads. Its movements, all intrastate, range from 200 feet to a mile. The preponderance of the movement is in privately owned refrigerator cars, usually loaded in both directions, for which an indirect allowance is made by way of a difference in the switching charges as between carrier and private cars. It was pointed out that the number of cars owned by the Chicago Junction is inadequate to handle the business and without the use of those private cars the carrier would necessarily incur a per diem charge of $1 per car for the use of foreign cars. The table below, compiled from one of the shippers' exhibits, shows the present charges applying on this line for both interdistrict and intradistrict movements:

	Intradistrict	Interdistrict
Chicago Junction cars:		
Loaded	$7.15	(1)
Empty	3.15	$4.50
Private cars:		
Loaded	3.15	12.00
Empty	3.15	4.50

[1] 2.5 cents, minimum 60,000 pounds.

While the record is not entirely clear, the Chicago Junction apparently proposes to increase all of its rates to the Lowrey basis, except that it desires to continue the present charges of $3.15 and $7.15 per car for intradistrict movements. The charges of $12 and $15 per car for interdistrict movements would be increased to $18 under the proposed rate of 3 cents, minimum 60,000 pounds. As the actual hanging loads weigh 25,000 pounds and the floor loads 35,000 pounds, the increase to $18 per car would, in fact, result in increasing the rates to 7.2 cents and 5.1 cents per 100 pounds for the comparatively short 1-line hauls referred to above.

In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic.

Sand, gravel, and crushed stone.—These commodities are almost invariably classed together for rate-making purposes. Notwithstanding that fact an effort was made by the producers of crushed stone within the district to justify lower rates on their commodity than on gravel, with which crushed stone competes. This comprehended the processes and higher cost of producing crushed stone.

That testimony was rebutted by the producers of gravel at near-by points outside of the district.

The producers of crushed stone also assert that gravel is produced and shipped largely from near-by points outside of the district which are located on trunk lines able to make local delivery, and that the points of production of crushed stone within the district are located on switching roads which require a connecting-line delivery. In other words, gravel now moves from near-by points outside of the district on single-line rates of 65 cents per ton, while the crushed stone referred to now moves within the district on 2-line switching rates of 50 cents per ton which, under the proposed adjustment, would be increased to 70 cents per ton, resulting in a spread of 5 cents over the gravel rates.

The producers of crushed stone within the district are in accord with the general plan of a uniform rate basis and expressly discountenance a zoning plan, because of the discrimination which they allege generally results therefrom. Despite those views they suggest a different scale of rates per car on their commodity, as follows:

Weight	One line (per car)	Two line (per car)	Three line (per car)
60,000 pounds	$12	$15	$18
80,000 pounds	16	20	24
100,000 pounds	20	25	30

The adoption of the above scale would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present 1-line charge and decreases in all charges under the proposed all-commodity basis. It would aggravate an alleged prejudicial situation, general in its scope, said by outside producers to exist now in favor of the present switching district rates as compared with the rates into the district from Zones I, II, and III.[5] Furthermore, its adoption would result in an unwarranted inconsistency within the district rate structure itself. Clear justification for any departures from the all-commodity basis is peculiarly necessary in this case in view of the fact that a uniform all-commodity basis of rates is desired by shippers and carriers alike, eliminating all consideration of the usual factors of distance, volume, loading, value, etc. Such a structure should be applied in the light of its reciprocal nature. To attempt to equalize advantages and disadvantages in spe-

[5] Zones I, II, and III embrace points within 50, 51 to 100, and 101 to 150 miles from Chicago, respectively. The corresponding 1-line rates are 65, 70, and 75 cents, and the connecting-line rates are 85, 90, and 95 cents on basis of net tons. *Chicago Gravel Co. v. Indiana Harbor Belt R. R. Co.*, 146 I. C. C. 101.

cific instances by variations in the rates tends to defeat the purpose and intent of the structure itself.

The producers of sand submitted testimony of a character similar to that submitted by the producers of crushed stone.

In the report of division 1 in the *Chicago Gravel Co. case, supra,* decided June 27, 1928, it was stated, at pages 103 and 107:

> Very little sand and gravel is produced within the district. Producers of crushed stone and slag are located chiefly on the belt lines. During 1925 the average loading of crushed stone within the district was 53.7 tons and the weighted-average haul 22.35 miles. The short-line distance, including in some instances hauls over three lines, is about 35 per cent less. About 35 per cent of the shipments moved over one line for average distance of 17.4 miles and about 65 per cent over two lines for an average distance of 25 miles. The movement over three or more lines was negligible. * * *
>
> It is clear that the Joliet group should not be grouped with the district on this traffic but that it is properly included in the zone and differential adjustment from points outside the district. In the original proceedings the commission specifically found, on a very comprehensive record, that the single-line rate of 65 cents from the Joliet group and other Zone I producing points was not unreasonable. The record in the instant case affords no basis for a modification of that finding.
>
> Assuming, however, that the 15 cents difference between the 65-cent single-line rate from the Joliet group, on the one hand, and the base rate for one-line and two-line hauls within the district, on the other, is too great, the remedy would lie in a proper determination of what the level of the district rates should be. It is our view, however, that this record is insufficient for such a determination. The measure of the district rates on commodities generally, including those here considered, is involved in the *Chicago Switching District case,* now pending. In that proceeding, which is a comprehensive one, a larger and broader record will be available. Our findings here, therefore, are without prejudice to the conclusions which may be reached in that proceeding.

After due consideration of all the facts submitted in relation to sand, gravel, and crushed stone moving from point to point, within the district, there appears no justification for excepting these commodities from the uniform basis of rates contemporaneously in effect at the time of movement.

Slag.—This is primarily a refuse by-product of steel and when sold brings a very low price. Commercially it is used either as a material for fills or it is prepared as a coarse aggregate for concrete mixtures, in competition with sand, gravel, and crushed stone. As refuse it is transported by rail to some available place where it may be dumped. Its accumulation at the steel industries within the district is considered as a nuisance and a hindrance to the operation of those plants. Within the district the carriers have classed refuse slag with cinders, quarry strippings, etc., and have cooperated in its disposal by means of rates lower than the Lowery basis when

carrier equipment is furnished and still lower rates if in private equipment. The record is not clear as to the commercial slag rates other than to indicate that they are higher than the rates on refuse slag.

The shippers emphasize that slag is waste material, but make no distinction between slag in its raw state and that which by the processes of crushing and screening or by washing and granulating has been given a utility value as a construction material similar to that of the sand, gravel, and crushed stone with which it competes. In *Chicago Gravel Co.* v. *A., T. & S. F. Ry. Co.*, 146 I. C. C. 290, and the cases referred to therein, we classed slag with sand, gravel, and crushed stone, and have in every instance prescribed the same line-haul rates for those four commodities without distinguishing raw from commercial slag. That parity should likewise be maintained within the district under its uniform all-commodity rate structure which fundamentally disregards all differentiating characteristics appertaining to the commodities themselves. To some extent private equipment is furnished by shippers for the movement of slag.

Lumber.—The Chicago Retail Lumber Dealers Association, representing 135 lumber yards in the district, submitted testimony to the effect that the present rates, which are generally on the Lowrey basis, are satisfactory to its members. These shippers urge that the present rates be retained. They state that from 4,000 to 5,000 carloads of lumber per year are switched within the district, but that 80 per cent of the entire lumber movement is by motor truck. They contend that a still larger tonnage will be diverted to the trucks if the rates are increased.

Corn products.—The principal products of corn are starch, sirup, sugar, oil, gluten feed, and meal. The Corn Products Refining Company, of Argo, Ill., and the American Maize Products Company, of Roby, Ind., both located within the district, in opposing any increase in the rates, pointed out that the greater part of their shipments within the district weigh less than the minimum of 60,000 pounds, which would result in the payment of freight charges averaging from 6 to 9 mills per 100 pounds in excess of the rates now in effect. This, however, is not due to inability to observe the minimum in physical loading, but is said to be necessary to meet the competition resulting from the lower minima of 36,000 to 40,000 pounds applicable in connection with road-haul movements from points outside of the district, such as Decatur and Granite City, Ill., Cedar Rapids, Clinton, and Keokuk, Iowa.

These producers contend for transit arrangements at Argo and Roby applicable on corn moving in and the products out when des-

tined to points within the district, with provision for the absorption of switching charges. Comparisons were made of the switching charges at Chicago with those within other switching districts, such as Buffalo, N. Y., Detroit, Mich., Cincinnati, Ohio, and Boston, Mass., but no showing was made of the comparative conditions. These shippers contend that lower rates should prevail in the Chicago district because of the greater density of switching traffic, while on the other hand the carriers consider that condition as being conducive to higher costs of service. In a large measure the testimony adduced involved transit privileges and line-haul rates alleged to be prejudicial to Chicago and preferential of other remote points.

Petroleum oil.—The petroleum refineries directly concerned herein are located at Whiting and East Chicago, Ind., points within the district. There is a considerable volume of this traffic, all of which moves in privately owned tank cars, and for which no allowance is made. The empty movement is 100 per cent of the loaded movement. This testimony stressed the possibility of an increased movement in tank trucks if the present rates are increased.

Tar products.—This item embraces roofing and paving tar, paving pitch, and some creosote oils. The products move almost entirely in private tank cars for which, apparently no allowance is made, and they generally move on the full Lowrey rates. The Chicago & Illinois Western publishes a 1-mile rate of $9 per car for a comparatively short haul applicable to intrastate traffic only. It handles five or six cars a day on that rate. That carrier is desirous of continuing the rate of $9 rather than be deprived of the business which, it was testified, would be diverted to water transportation if the rate is increased.

The use of private tank cars for the transportation of tar products, with the resulting elimination of per diem charges and cost to carriers for maintenance of equipment, and other costs incidental to ownership, was especially stressed.

Comparison was made of the average earnings of $22.50 on certain loaded tank cars of coal tar with the approximate cost of $11 for hauling the car in a 3-line movement, but in that comparison the cost for the empty movement apparently was not considered. Ordinarily the use of private tank cars for particular commodities, exclusively, involves a 100 per cent empty movement.

Chemicals.—The Grasselli Chemical Company introduced evidence with respect to the transportation of various acids, salts, phosphates, etc., manufactured by its plant at Grasselli, Ind., which is within the district. With the exception of sulphuric acid and muriatic acid, in tank cars, the commodities embraced within this class move on

the full Lowrey rates. A rate of 2 cents for single-line hauls was voluntarily established by the Indiana Harbor Belt and the Baltimore & Ohio Chicago Terminal on those two acids in private tank cars. American Tank Car Line equipment, owned by the Grasselli Chemical Company, is furnished. No allowance is received for the use of that equipment within the district, except on certain movements for which the Indiana Harbor Belt allows 1.5 cents per car-mile, the same as in road-haul movements. Due to the proportionately greater detention in the district than in road hauls, this shipper considers 1.5 cents inadequate. Comparison was made of that allowance with the owner's cost per car-mile of 6.5 cents in 1926 and 8.1 cents in 1927 to maintain and operate its tank cars.

In justification of the present rates, and particularly the one-line rate of 2 cents on sulphuric and muriatic acid, comparison was made of the present rates in the district with those at Toledo, Canton, and Cleveland, Ohio, and New Castle, Pa. The carload minimum in the latter districts generally is 50,000 pounds and the rates range from 1.9 cents to 2 cents for 1-line hauls, and from 2.25 to 5 cents for 2-line hauls. The average 1-line hauls at those points range from 5 to 9 miles and the 2-line hauls range from 4.24 to 5.03 miles. At Cincinnati, Ohio, the 1-line rate is 2 cents and the average haul is 7.06 miles. The 2-line rate is 2 cents plus $8.10 per car, which applies between Cincinnati and Lockland, Ohio, and the average haul is 19.97 miles. In the Chicago switching district the weighted-average 1-line haul for both chemicals and explosives, as shown by the carriers' exhibits, is 10.7 miles, 2-line 25 miles, and 3-line 17.4 miles. The record does not disclose whether the rates applicable within the compared districts are made upon an all-commodity basis similar to Chicago, or whether they apply only to chemicals.

The witness also referred to the comparatively low grade and heavy-loading characteristics of sulphuric and muriatic acids and to the number of shipments made by the Grasselli Chemical Company within the district.

Iron and steel.—Testimony was produced by steel industries located within the district at Indiana Harbor, Ind., South Chicago, East Chicago, and Grand Crossing, Ill., and on behalf of steel industries outside of the district located at Chicago Heights and Evanston, Ill. The testimony referred generally to the influence of freight rates upon the original location of steel industries within the district; to the history of those rates; and to such transportation factors as the volume and heavy loading of iron and steel billets, pig iron, and scrap iron, which ordinarily are influential in obtaining reduced line-haul rates. It was shown that the present rate of 2 cents, minimum 100,000 pounds, produces minimum revenues of $20 per car, as com-

pared with the present revenue of $15 per car based on the Lowrey rate of 2.5 cents and 60,000-pound minimum.

Railway equipment.—Freight, passenger, work, and other equipment on its own wheels is generally hauled within the district at a rate per car; but rates per 100 pounds are published by some of the carriers. The charges for this service differ widely, ranging from $3.15 per car, which is proposed to be increased to $3.80, to $14 per car, proposed to be increased to $17.40. In either case the rates are not upon the Lowrey basis, and it is the desire of the carriers as well as the manufacturers to continue to move this equipment on excepted rates. A number of the carriers propose no change in their rates. In instances where increases are proposed the increased rates will continue to be upon a per car basis or, if upon a weight basis, the proposed rates would be lower than the Lowrey basis. Railroad equipment was not included in the carriers' cost studies. Furthermore, it appears that new cars frequently move in train lots directly from the yards of the car companies to the connecting line purchasing the cars. Under all the circumstances, and in view of the dissimilarity of conditions surrounding the movement it is apparent that railway equipment on its own wheels may well be excepted from the all-commodity basis, but the record is not sufficiently comprehensive to warrant the prescription of a definite basis of rates.

Other commodities.—Testimony similar to that discussed above was presented in connection with brick, building tile, coal and coke, and various other commodities. They move within the district in carrier equipment, except in the case of some coal and coke shipments, and appear to have no transportation characteristics which would entitle them to any different treatment than others in the all-commodity group.

EX-LAKE TRAFFIC

The switching rates on ex-lake traffic moving directly or indirectly between docks and industries within the district are generally higher than on ex-rail traffic. The record indicates that at various times the tariff provision excluding ex-lake traffic has been withdrawn by certain carriers and subsequently reinstated. At the present time it appears that all carriers exclude ex-lake traffic from the application of the uniform basis of rates, but under the proposed tariffs certain of the carriers have withdrawn the restriction.

The ex-lake switching rates range from 60 to 100 per cent higher than the rates on corresponding ex-rail traffic. The proposed rates range from 43 to 100 per cent higher. The Chicago Association of Commerce urged that all restrictions be removed from ex-lake traffic and that it be accorded the same level of rates as ex-rail traffic. The

testimony in this respect was limited and entirely lacking in comparisons of ex-lake and ex-rail traffic as to transportation characteristics, and affords no basis for a definite finding.

PRIVATE EQUIPMENT

Tar products, petroleum oil, coal and coke, packing-house products, sulphuric acid, muriatic acid, and slag are generally hauled in private equipment, tank cars being used for the liquid commodities. In connection with certain short hauls tar products move on a rate of $9 per car; coke on a rate of 10 cents per net ton less than the Lowrey rates; and packing-house products $3 less than when moved in carrier equipment. The acids move on a special 1-line rate of 2 cents voluntarily established by the Indiana Harbor Belt and the Baltimore & Ohio Chicago Terminal, and in addition on certain movements not fully described in the record the former road allows 1.5 cents per car-mile for use of private tank cars containing acid. Other than those specified no allowance is made by the carriers for the use of private equipment within the district.

In *Lehigh Portland Cement Co.* v. *Director General*, 58 I. C. C. 429, referred to by the shippers, we prescribed rates on crushed stone 10 cents per net ton less when private cars were furnished than when shipped in railroad equipment. However, in subsequent cases we have said that compensation to private car owners where it is necessary to use private equipment should be made through a rental charge and not through a differential in freight rates. *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216. In *Paragon Refining Co.* v. *A. & S. R. R.*, 118 I. C. C. 166, at page 167, division 4 stated:

> Under section 1 of the act the duty is placed upon every carrier subject to the act to provide transportation, including the furnishing of cars. When a shipper furnishes his own car he relieves the carrier of so much of its obligation as a common carrier and is entitled to reasonable compensation from the carrier for the service rendered. The act of May 29, 1917, empowered us to fix the compensation to be paid by the carrier for the use of any car not owned by any such common carrier, and in *In the Matter of Private Cars*, 50 I. C. C. 652, decided July 31, 1918, payment of 1 cent per car per mile for loaded and empty movements was fixed as a reasonable compensation for the use of private tank cars, mileage to be computed on the basis of distance tables without the elimination of mileage through switching districts. The decision was silent as to who should pay the allowance for the distance hauled by the switching line.

And we found that a reasonable allowance for the future would be 1.5 cents per car per mile, computed on the basis of distance table. The shippers, however, contend that the usual allowance of 1.5 cents per car-mile for road service is inequitable in the case of switching

movements, due to the detention in the latter service being entirely out of proportion to the mileage made. No testimony was presented by the carriers in that connection. Clearly, it is the duty of carriers to provide reasonably adequate and suitable equipment for all traffic which they undertake to transport, and it does not necessarily follow from the mere fact that certain shippers are furnishing their own equipment that they are to be compensated therefor. It may be, and usually is, a distinct benefit and advantage to the shipper to use his own equipment. The record does not fully disclose to what extent the use of private equipment is made necessary through failure of the carriers to maintain an adequate car supply, nor is it sufficiently comprehensive to determine what would be a fair and reasonable rental charge therefor. If the carriers and shippers should be unable to agree upon a fair charge for the use of private equipment, this feature of the case may again be brought to our attention for further hearing.

While, as above indicated, the cost study herein presented is one of the most comprehensive ever undertaken in connection with any switching case, there is considerable divergence of opinion between the parties as to the amount of the costs involved. The cost ascertainment was limited to those intradistrict cars which moved wholly over the study roads, the unit costs developed during the 7-day test in 1927 being applied to the intradistrict cars which moved wholly over the 15 study roads during the traffic test in September, 1926. The unit costs developed during the 7-day test in 1927, however, were necessarily based upon averages for all cars handled by all of the study roads in each element of switching service during that period, and this movement included not only all intradistrict cars, study and nonstudy, but also all road-haul cars handled in these elements of switching service. Sixty-one per cent of all intradistrict cars were handled in all elements of switching service by the 15 study roads, and a large part of the remaining 39 per cent were handled in some elements of switching service. It, therefore, seems to follow that the costs for the intradistrict study cars should be reasonably representative of average costs for all intradistrict traffic.

We can not, however, accept the cost study as a definite yardstick by which alone to measure the reasonableness of the rates under consideration, but in addition must apply other tests to determine their reasonableness. In *Switching at St. Louis and East St. Louis*, *supra*, division 3, at page 220, we said: "A cost study is ordinarily little more than a very rough indication, and, even if unusually comprehensive and exact, it should not be the sole basis for fixing rates." The hauls involved range from a minimum of 0.1 mile to a maxi-

mum of 61.1 miles, with one haul shown to be 89.54 miles. The average hauls for all intradistrict switching are 10.8 miles for 1-line, 21.6 miles for 2-line, 24.5 miles for 3-line, and 18 miles for one, two, and three line hauls, combined. These hauls although made with a switch engine are of such great average lengths as to suggest that they are, in effect, line hauls, and except for the fact that they are performed wholly within a district of such unusual size as the Chicago switching district they would be subject to the usual line-haul rates for such distances. In view of this, and the fact that the record contains no evidence to indicate that it costs less to handle traffic by switch engine than by road engine for road hauls of similar distances, it will be enlightening to compare the rates under suspension with line-haul rates prescribed for low-grade commodities for similar average loads and distances.

In the *Southwestern Brick Cases*, 107 I. C. C. 681, we prescribed a distance scale of maximum reasonable carload rates on brick and related articles for application in the Southwest, the single-line scale commencing with a rate of 4.5 cents for hauls of 10 miles and under, with 1 cent added for joint-line hauls.

In No. 17000, Part 11, *Sand, Gravel, Crushed Stone, and Shells*, 155 I. C. C. 247, we prescribed a distance scale of rates for application on sand, gravel, crushed stone, etc., in straight or mixed carloads, between points in Arkansas, Louisiana, and Texas, and western Louisiana. For 10 miles and under rates of 2.5 cents for single-line and 3.25 cents for joint-line hauls were prescribed. Somewhat higher rates were found reasonable for application between points in Arkansas, Oklahoma, and Texas and east-bank crossings in Louisiana.

In No. 17000, Part 6, the *Iron and Steel Investigation*, 155 I. C. C. 517, the scale of rates prescribed for application throughout official territory on a large list of iron and steel articles commenced with 6 cents for 5 miles and under, and for the 15 to 20 mile block, representing the average hauls within the Chicago district, a rate of 8 cents was prescribed. This, and numerous other similar comparisons which could be shown, covering rates prescribed on various low-grade commodities for short hauls, indicates that the rates under suspension are considerably lower than the rates prescribed by us for similar distances in line-haul movements.

RATES BETWEEN CHICAGO HEIGHTS, ILL., AND CHICAGO SWITCHING DISTRICT

Chicago Heights was founded in the year 1893 as an industrial center adjacent to the Chicago switching district. It has a population of approximately 30,000, and about 85 industries. During

1927, 15,251 carloads were moved between Chicago Heights and the district. It is 26.6 miles south of the Chicago station on the Chicago & Eastern Illinois and about 10 miles south of Dolton, Ill., near the southern boundary of the Chicago switching district. The following table, compiled from the record, compares the relative location of Chicago Heights with Gary and Hobart, Ind. While the rates from these compared points, located outside the district, are line-haul rates, and therefore not directly in issue, their relationship at least has an indirect bearing on the issues involved.

		Distance from Chicago station	Distance from Chicago switching district
		Miles	*Miles*
Chicago Heights	C. & E. I. Ry.	26.6	[1] 8.0
Gary	P. R. R.	27.4	4.0
Hobart	do	33.3	9.0

[1] In the exceptions to the examiners' report and on argument it was urged that Chicago Heights is only 3.7 miles beyond the southern boundary of the district of Thornton, Ill. But neither the map filed of record nor the list of stations within the district indicates that Thornton is included within the switching limits. In *Indiana State Chamber of Commerce* v. *A. T., & S. F. Ry. Co.*, 122 I. C. C. 81, 90, it is stated that Chicago Heights is approximately 7.5 miles outside of the outer rim of the Chicago switching district.

The local switching at Chicago Heights is performed by the Chicago Heights Terminal Transfer Railroad, which is solely a switching carrier, serving 83 of the industries located at that point. Between Chicago Heights and the Chicago switching district the movement is performed as switching by the Baltimore & Ohio Chicago Terminal and the Chicago & Eastern Illinois jointly with its subsidiary the Chicago & Western Indiana.

Prior to 1900 various rates were in effect between the two districts. In 1900 a rate of $5 was established by agreement between the Chicago Heights Terminal Transfer and the Chicago & Eastern Illinois. Since 1907 the interdistrict rates generally have been maintained upon a parity with the rates within the Chicago switching district. The following chronological table shows the rates in effect since 1907:

	Per car, minimum 60,000 pounds [1]			Per hundredweight, minimum 60,000 pounds				
	1907	1908	1909	1911	1918	1920	1922	Present
				Cents	*Cents*	*Cents*	*Cents*	*Cents*
Chicago Heights to/from Chicago switching district	....	$5.50 to 8.00	$5.50 to 8.00	1.5	2.0	3.0	2.5	2.5
Within Chicago switching district	$5.50 to 13.00	$5.50 to 13.00	$5.50 to 10.50	1.5	2.0	3.0	2.5	2.5

[1] Excess 18.3 cents per ton.

Both the Chicago Heights shippers and the carriers directly serving that point urge that the existing rate parity between Chicago Heights and the Chicago switching district be maintained, or preferably that Chicago Heights be included within the district. The latter would accord Chicago Heights the desired parity of rates as a matter of course by inclusion of the rates in the Chicago switching tariff rather than by separate publication in the tariffs of the individual lines serving Chicago Heights. The proponents for including Chicago Heights in the district compare it with industrial centers suburban to Chicago which are now within the district, namely, Harvey, Ill., Indiana Harbor, and Hammond, Ind. They point out that since 1900 Chicago Heights and the Chicago switching district have been considered as one homogeneous industrial district, and assert that this rate relationship is the very foundation upon which the industries at Chicago Heights were established, and that its destruction would spell industrial and commercial ruin to the entire community.

In *Indiana State Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 122 I. C. C. 81, decided January 20, 1927, division 4 had under consideration the rates on brick and articles taking the brick rates, such as hollow building tile, from various points, including Chicago Heights, Ill., and Hobart, Ind., to the Chicago switching district. The rates of $1.05 on face brick and tile and 85 cents on common brick, applicable from Hobart to points within the Chicago switching district, were attacked as unreasonable, unjustly discriminatory, and unduly preferential of the rates from Chicago Heights. We there said, at page 96:

> Witness for the B. & O. C. T. asserted that the present rates from Chicago Heights are unreasonably low, but did not attempt to say what would be reasonable. The Pennsylvania insists that the rates from Chicago Heights on the B. & O. C. T. should be no lower than the rate from Hobart, because the transportation conditions are substantially similar. All defendants agree that the 50 and 60-cent rates from Chicago Heights menace the present rate structure.

We found that the circumstances and conditions surrounding the transportation of interstate and intrastate shipments of articles in the uniform brick list from Chicago Heights are substantially similar to those surrounding the interstate transportation of like traffic from Hobart, and ordered that rates on that traffic be established from Chicago Heights to the Chicago switching district no lower than contemporaneously maintained from Hobart to the same destination. It was also found that the interstate rate on articles in the uniform brick list from Hobart was not unreasonable. These rates, upon protest of the Manufacturers Association of Chicago Heights on the ground that the proposed rate of $1.05 on hollow

building tile would unjustly discriminate against Chicago Heights and unduly prefer Pullman, Ill., a point within the Chicago switching district, and which enjoys the switching district rates, were suspended under No. 2900. Apparently through oversight the Baltimore & Ohio Chicago Terminal failed to further postpone its schedules beyond January 1, 1929, but subsequently by special permission the higher suspended rates were permitted to be withdrawn, thus restoring the 2.5 and 3 cent rates previously in effect.

The Chicago Heights interests, however, urge that because of the subsequent changed conditions the finding in the *Indiana State Chamber of Commerce case, supra*, that Chicago Heights is unduly preferred to the undue prejudice of Hobart, is no longer controlling. They show that subsequent to the entry of the order therein we authorized acquisition by the Chicago & Eastern Illinois of control of the Chicago Heights Terminal Transfer Railroad; that one of the reasons advanced for granting approval was the improvement in economy and efficiency of operation which would be effected thereby; and that as a result thereof switching service has been substituted for the line-haul service then in effect between Chicago Heights and the Chicago switching district. It appears that manufacturers at Chicago Heights are in keen competition with those located within the Chicago district; that the movement between Chicago Heights and the district is extremely heavy; that the operation of the trains by switching crews is substantially the same as is the operation of a train moving between two terminal yards in the Chicago switching district; and that, while the situation at Hobart affects only hollow building tile, which is but a very small part of the entire movement, there are many other commodities moving to and from Chicago Heights which compete with the commodities shipped by industries in the Chicago switching district.

The *Iron and Steel Investigation*, decided June 3, 1929, included I. & S. Docket No. 2713, wherein the Chicago & Eastern Illinois proposed to cancel the rates of 13 cents on band, bar, and rod iron, and 15.5 cents on other iron and steel articles from Terre Haute and Brazil, Ind., to Chicago, and to establish in lieu thereof a rate of 19 cents. The Highland Iron & Steel Company, protestant, contended that the applicable rate from Terre Haute bore a fixed and definite competitive relationship to the rates from Chicago Heights to the district and to rates within the district. We therein said that points outside of the Chicago district shipping to that district would be subject to the scale of line-haul rates prescribed in that case and that the Terre Haute shippers should be upon the same basis in order to avoid undue prejudice and preference, leaving the matter of rates from Chicago Heights for disposition in the instant case. The

20.5-cent rate subsequently established under our findings in the Iron and Steel Investigation has since been reduced by the carriers to 15 cents, minimum 80,000 pounds, on iron or steel bars. I. and S. No. 3557, *Bar Iron from Terre Haute*, 174 I. C. C. 388.

The carriers' cost data and statistics relative to traffic between Chicago Heights and the district show the average operating expenses to be 2.5, 2.9, and 2.5 cents per 100 pounds for 2-line, 3-line, and 4-line hauls, respectively. The corresponding average hauls are 31.66, 33.42, and 41.94 miles. There being no 1-line hauls between Chicago Heights and the district, considering for the purposes of this case the Chicago Heights Terminal Transfer as a separate line, and no data on 4-line hauls within the district, only the two and three line hauls can be compared. The average two and three line hauls are, respectively, 10 and 7 miles longer and the operating expenses are slightly higher than in the district. Expanding those operating expenses to a total cost basis through the use of an operating ratio of 70 per cent results in increasing the amounts to 3.5 and 4.14 cents, respectively, for the two and three line hauls. It thus appears that these average hauls and costs for the various movements are somewhat greater than those applicable on traffic within the Chicago switching district. Considering all the facts of record it is evident that the present rates are too low and that rates somewhat in excess of the corresponding 2-line and 3-or-more line rates within the district will not be unreasonable for application between Chicago Heights and the Chicago switching district. But inasmuch as there is no proposal on the part of the respondents serving Chicago Heights to establish any higher rates than apply within the district, and no showing on the part of shippers within the district that the maintenance of district rates to and from Chicago Heights will result in undue prejudice to them and undue preference of Chicago Heights, we will make no finding herein which would require higher rates between Chicago Heights and the Chicago switching district. Nothing here said, however, should be construed as setting aside the findings in the *Indiana State Chamber of Commerce case, supra*.

DES PLAINES, ILL.

Des Plaines is situated 16.5 miles northwest of the city limits of Chicago, but within the outer zone of the switching district. It is a so-called red-line station on the Minneapolis, St. Paul & Sault Ste. Marie and the Chicago & North Western from and to which no joint switching rates apply. Greenhouses are its principal industry, and from them flowers are shipped into Chicago. Approximately 900 cars of various commodities were received during 1927 from points

within the district. It appears that there are other flower-growing centers within the district with which Des Plaines competes and which have the advantage of the district switching rates.

The shippers urge that the entire outer zone of the switching district be granted the flat switching rates without the addition of arbitraries, generally 0.5 cent per 100 pounds, which now apply throughout the remainder of the district. The carriers in fact intimated that if the proposed rates on the all-commodity basis are found reasonable they would not object to abolishing the arbitraries and would apply the all-commodity rates to the outer-zone stations. The record does not disclose clearly why in the first instance the district was extended to include the outer-zone stations or the reasons for the application of a different basis of rates. No substantially different transportation conditions are shown to exist relative to location or otherwise. In fact, no reason has been advanced in support of the differential other than what would appear to be the policy of the individual carrier. Therefore, so long as these so-called outer-zone stations are retained within the switching district they should be accorded rates no higher than apply generally within the district.

A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time.

FINDINGS

The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one, two, and three-or-more line movements are not excessive. We find:

(*a*) That the rates proposed of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more line hauls, carload minimum 60,000 pounds, within the Chicago switching district as defined in Appendix A, will not be unreasonable for the future for application on all of the commodities switched within the district, except railway equipment on its own wheels. As previously stated, railway equipment on its own wheels was not included in the cost study and the record is not sufficiently comprehensive to permit of a definite finding thereon, but the carriers should establish a reasonable uniform charge on a per car basis for application to all movements of railway equipment throughout the district.

(*b*) That in instances where it is necessary to utilize private equipment the shippers should be compensated for the use thereof by specific charges on a rental basis and not through a differential in the freight rates.

(*c*) That the rates proposed by respondents for application between Chicago Heights, Ill., and the Chicago switching district on this record not shown to be unlawful, except in so far as such rates may be in conflict with the findings in the *Indiana State Chamber of Commerce case, supra.*

The schedules under suspension in I. and S. No. 2900 will be required to be canceled, without prejudice to the filing of new schedules in conformity with the findings herein.

The complaint in No. 20006 will be dismissed. Appropriate orders will be entered.

COMMISSIONERS AITCHISON and TATE did not participate in the disposition of these cases.

APPENDIX A

Chicago switching district defined

Beginning at a point on the shore of Lake Michigan, due north of Clarke Junction, Ind.; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Ind.), thence southwesterly and south just west of the Elgin, Joliet & Eastern to but not including Ivanhoe, Ind.; thence southwesterly to and including Hessville, Ind.; thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Ill.; thence northwesterly west of the Pennsylvania (Logansport division) to a point just south of Dolton, Ill.; thence southwesterly to a point just south of Homewood, Ill.; thence northwesterly just west of the Grand Trunk to a point just west of Blue Island, Ill.; thence north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Ill.; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Ill.; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Ill.; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west

of Melrose Park, Ill.; thence west just south of the Chicago & North Western to and including the Proviso transfer yard of that company; thence north to Addison Street; thence east to a point south and west of Godfrey yard on the Chicago, Milwaukee, St. Paul & Pacific; thence to a point just north of the Chicago, Milwaukee, St. Paul & Pacific; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie to and including Des Plaines, Ill.; thence southeasterly just east of the Chicago & North Western Railway to the city limits of Chicago, thence east just north of the said city limits of the Mayfair cut-off of the Chicago & North Western; thence northeasterly just west of the Chicago & North Western to and including Greenwood Street station; thence southwesterly just east of the Chicago & North Western to the city limits of Chicago; thence east just north of city limits to the east line of Chicago Avenue or Clark Street; thence northerly on the east line of Chicago Avenue 725 feet; thence east to the east line of Chicago, Milwaukee, St. Paul & Pacific; thence southeasterly to center line of Howard Street; thence easterly on the said center line of Howard Street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning.

APPENDIX B

Notice of October 25, 1926

I. & S. No. 2780
Iron and Steel Between Points in The Chicago Switching District

I. & S. No. 2658
Iron and Steel Between Points in Illinois Freight Committee Territory

I. & S. No. 2713
Iron and Steel Articles from Brazil and Terre Haute, Ind., to Chicago

With a view to providing an adequate record it is requested that the respondents and protestants be prepared to furnish at the hearing in Chicago, Ill. on November 9, 1926 the data called for below in addition to such other evidence as may appear pertinent to the proceedings:

To be Furnished by Carriers:[1]

(a) The shortest haul on iron and steel articles in the Chicago district.
(b) The longest haul on iron and steel articles in the Chicago district.
(c) The average haul on iron and steel articles in the Chicago district.
(d) The information called for in (a), (b) and (c) should be subdivided for one-line hauls, two-line hauls and three or more line hauls if possible. In submitting the data under (c) the average should be given consideration and as accurate as possible an estimate be submitted of the weighted average haul not only for one-line, two-line and three or more line hauls separately, but for the average in the district as a whole. The answers should include all territory to which the carriers' proposed rates are to apply whether they are ordinarily considered to be within the Chicago district or otherwise.
(e) How the two and three or more line rates divide between the respective carriers.
(f) Full description of the methods of handling the traffic, including the setting of cars, movement to destination and removal of car after unloading, if any.

[1] This, of course, will not preclude other parties from furnishing data on these questions.

(g) [2] Cost data with respect to the movement of iron and steel articles within the Chicago district (including interest on investment), covering the average one-line haul, the average two-line haul, the average three or more line haul, also the general average haul, each separately if possible.

(h) What factors make the cost of a switching haul in the Chicago district greater or less than an average road haul of the same length in Illinois or Indiana in the vicinity of Chicago? (Cover only complete local movements and do not include movements in connection with road hauls from or to points without the district.)

(i) Is a local switching haul, as described in the preceding paragraph, of a given length more or less expensive in the aggregate than a road haul of the same length? Give full data supporting answer.

To be Furnished by Protestants:[1]

(j) Full description of the competitive situation as between iron and steel industries within the district and between industries in the district, on the one hand, and Gary, Ind., Chicago Heights, Ill., Pittsburgh, Pa., Terre Haute, Ind., etc. on the other.

(k) Average value, average loading and transportation conditions of the iron and steel articles under consideration.

APPENDIX C.

Traffic analysis.

One-line hauls

Of the total tonnage carried in 1-line hauls 16.95 per cent moved on the present Lowrey rates; 38.22 per cent over; and 44.83 per cent under those rates. At the proposed rates those proportions would be 68.88 per cent on the Lowrey rates; 3.44 per cent over; and 27.69 per cent under those rates. A much greater proportion of the 1-line tonnage would move on the proposed Lowrey rates than on the present rates due to the elimination of some exceptions. From a revenue standpoint, however, it is evident that the 1-line movement on exceptions over either the present or proposed Lowrey rates fails to entirely counterbalance the movement on exceptions under that basis. The latter is shown by the present weighted-average revenue of 2.1 cents as compared with the present rate of 2.5 cents and the proposed weighted-average revenue of 2.5 cents as compared with the proposed rate of 3 cents.

Interstate.—The average revenue on the total 1-line interstate traffic is 2.7 cents as compared with the present Lowrey rate of 2.5 cents and would be 3 cents at the proposed rate of 3 cents and exceptions. Under the present rates there is an extensive movement of coke; clay, gravel, sand, stone; iron, pig and bloom; rails and fastenings; and cement on rates over the Lowrey basis which produce average revenue of 2.9 and 3.8 cents. At the proposed rates and exceptions thereto, the average revenue on the same commodities would be 3 and 3.9 cents. All interstate 1-line movements of grain, ice, chemicals and explosives, some movements of clay; sand, gravel, stone; and other commodities classed as miscellaneous which now yield average earnings of 1.8 cents at the present rates due to exceptions would also be placed upon the full proposed Lowrey basis of 3 cents. There are certain other movements of smaller volume of coke; clay, gravel, sand and stone; iron, pig and bloom; and the

[1] This, of course, will not preclude other parties from furnishing data on these questions.

[2] If actual figures are not available give best estimate.

greater movement of commodities classed as miscellaneous, probably refuse material, which now yield average revenue of 1.5 cents due to exceptions under the present Lowrey basis of 2.5 cents. At the proposed rates that traffic would continue to move on exceptions and would yield average revenue of 2.4 cents as compared with the proposed Lowrey basis of 3 cents.

Intrastate, Illinois.—The depression in the total average 1-line revenue as measured by the standard rates is attributable principally to a large intrastate movement in Illinois on exceptions under the Lowrey basis. That condition would be mitigated to a small extent at the proposed rates due to the elimination of some but not all of those exceptions. The present average net revenue is only 1.4 cents on the total Illinois intrastate 1-line traffic, and the proposal average revenue would be increased to only 1.9 cents on the same traffic. The heaviest Illinois intrastate movement on exceptions under the present Lowrey basis consists of grain; fresh meats; other packing-house products; coal; coke; clay, gravel, sand, and stone; iron, pig and bloom; iron and steel; and miscellaneous, which includes cinders, refuse, etc. The proposed basis eliminates grain entirely as an exception under the Lowrey rates and places it upon the full Lowrey basis. Heavy movements of the other commodities mentioned would continue on exceptions under the proposed Lowrey basis. The heavy volume of tonnage classed as miscellaneous which would continue to move at comparatively low rates under the Lowrey basis has a dominating influence on the Illinois intrastate revenue. As to the other commodities mentioned above, certain movements would be placed upon the full proposed Lowrey basis but as stated the heaviest movements of the same commodities would continue on exceptions under that basis depending upon the policy of the carrier performing the 1-line intrastate service within the State of Illinois. The especially heavy movement of packing-house products; coke; clay, gravel, sand and stone; and miscellaneous brings them into prominence under the latter category. As to packing-house products their continuation on exceptions under the Lowrey basis, in so far as that occurs, is attributable to the predominance of short hauls within the stockyard district ranging from 0.10 to 4.13 miles, the weighted average being 1.03 miles. With respect to the other commodities the record is not in sufficient detail to distinguish between the movements at the Lowrey rates, under and over those rates.

Intrastate, Indiana.—The reverse situation is reflected in regard to the Indiana intrastate 1-mile traffic moving at the present rates in that the weighted-average earnings exceed the standard rates. That traffic, under the present rates, produces weighted-average earnings of 2.6 cents as compared with the 1-line Lowrey rate of 2.5 cents. At the proposed rates the weighted-average earnings would be 3.1 cents as compared with the rate of 3 cents. This is induced by the 1-line movement of cement at 5 cents. While the cement tonnage is consequential it is not of sufficient weight in the computation of the averages to reflect itself materially unless accompanied by the relatively high rate factor; therefore the slight excess in earnings over the standard rate is attributable mainly to the cement rate of 5 cents from Buffington which is 2.5 cents above the present and 2 cents above the proposed Lowrey 1-line rate. The carriers assert that the 5-cent rate is related to the general cement rate structure, which would be disrupted if a change were made in the Buffington rate. There is also a comparatively small volume of material classified as clay, gravel, sand, and stone which produces earnings of 3.8 cents which is in excess of both the present and proposed Lowrey rates of 2.5 and 3 cents, respectively. Other commodities such as coke, and those classified as sugar, sirup, glucose; iron, pig and bloom; iron and steel; and miscellaneous, also move in considerable volume on exceptions that yield average earnings over the present Low-

rey 1-line rates, but would move on the proposed Lowrey basis. The rates on iron, pig and bloom; iron and steel; and miscellaneous commodities will be increased to bring them up to the proposed Lowrey basis; although they now move to a large extent on exceptions slightly over the present Lowrey basis. The traffic and revenue analysis prepared by the carriers, and from which the foregoing data have been extracted, includes other than strictly intradistrict movements over the E. J. & E. within the State of Indiana. That carrier is not a member of the Chicago switching committee, publishes its rates as line-haul rates, and disclaims that its services are in the nature of switching. While the E., J. & E. asserts that it subscribes to the all-commodity Lowrey basis within the district, the record indicates that the rates published by it and upon which a large part of the 1-line traffic under considertaion moved exceed the present Lowrey basis. The inclusion, therefore, of the E., J. & E. in so far as an analysis of the revenue is concerned would tend to distort the results because they are not based strictly upon either an intradistrict movement or upon the Lowrey basis of rates. Allowances must be made therefor in considering the average earnings on Indiana intrastate traffic shown in the above table.

Two-line hauls

Of the total tonnage carried in 2-line hauls 72.64 per cent moved at the present Lowrey rates, 13.12 per cent over, and 14.24 per cent under those rates. At the proposed rates those proportions would be 84.89 per cent Lowrey, 12.78 per cent under, and 2.33 per cent over the Lowrey basis. Comparatively, the tonnage in Indiana which moved intrastate in 2-line hauls is small. The bulk of all 2-line tonnage moves either interstate or intrastate in Illinois. The greatest volume, however, moves intrastate in Illinois as shown by the foregoing table. The total 2-line tonnage moving on the present rate and exceptions produced average revenue of 2.6 cents, as compared with the Lowrey rate of 2.5 cents. At the proposed rate of 3.5 cents and exceptions the revenue on the same tonnage would be 3.6 cents. In this case the excess earnings over the Lowrey basis is mainly attributable to the tonnage that moved and would move interstate and intrastate in Indiana on exceptions considerably over the Lowrey basis. This will be discussed in more detail hereunder.

Interstate.—The tonnage which moves at the present Lowrey rate of 2.5 cents and produces corresponding average revenue comprises 66.18 per cent of the total interstate 2-line movement and 27.78 per cent of the total interstate and intrastate 2-line movement. That embraced some movement, great and small, of practically all commodities. The commodities which moved in greatest volume were, in order according to volume, miscellaneous, probably consisting largely of refuse material; refined petroleum; iron and steel; clay, gravel, sand, and stone; ice; paper and books; iron, pig and bloom; rails and fastenings; coke; asphaltum; fresh meats; products of agriculture; and other metals. At the proposed Lowrey rate of 3.5 cents the foregoing commodities would continue to make up the bulk of the movement, and in addition grain would be included, together with an increased movement of miscellaneous, both of which would be transferred from exceptions under the Lowrey basis to the full basis of 3.5 cents. The proportion of interstate tonnage which would move on the proposed full Lowrey basis of 3.5 cents would be 74.84 per cent of the interstate 2-line tonnage and 31.41 per cent of total interstate and intrastate 2-line tonnage.

The interstate traffic which now moves on exceptions over the Lowrey basis and would continue to so move comprises 21.08 per cent of the total interstate 2-line tonnage and 8.85 per cent of the total interstate and intrastate 2-line

movement.—At the present rates the average revenue is 4.8 cents and at the proposed rates would be 5 cents. Included in this tonnage is a large volume of iron and steel, and cement. Doubtless much of it originates on the E. J. & E.

The interstate traffic which now moves and would move on exceptions under the present and proposed Lowrey basis is 4.08 per cent of the interstate traffic, and 1.71 per cent of the total interstate and intrastate traffic. That movement is practically all coke.

Intrastate, Illinois.—Of this traffic 78.05 per cent now moves on the Lowrey basis. This comprises 44.48 per cent of the total interstate and intrastate 2-line traffic and is made up of all classes of commodities except wheat, corn, and oats. The greatest volume consists of clay, gravel, sand, and stone; coke; iron and steel; fresh meats; ice; iron, pig and bloom; and commodities classed as miscellaneous. At the proposed rates the traffic that would move on that basis would be increased to 93.17 per cent of the Illinois intrastate 2-line traffic and 53.09 per cent of the total interstate and intrastate 2-line traffic. This increase would consist largely of grain which now moves on exceptions under the present Lowrey basis. The average revenue from grain at the present rates is 1.3 cents and would be 3.5 cents at the proposed full Lowrey basis. Certain traffic now moving on rates over the Lowrey basis would continue to move on rates over the proposed basis. That traffic amounts to 5.75 per cent of the Illinois intrastate 2-line movement and 3.28 per cent of the total interstate and intrastate two-line movement. The average revenue at the present rates is 3.6 cents and would be 4.2 cents at the proposed rates. That tonnage consists mainly of iron and steel; clay, gravel, sand, and stone; ice; brick and artificial stone; iron, pig and bloom; and miscellaneous commodities. The movement on exceptions under the present basis amounts to 15.61 per cent of the Illinois intrastate 2-line movement and 8.89 per cent of the total interstate and intrastate 2-line movement. The bulk of that traffic is grain which, as above stated, now produces average revenue of only 1.3 cents. A comparatively small portion of that traffic or 1.08 per cent of the Illinois intrastate 2-line traffic now earning average revenue of 1.6 per cent would continue to move on rates under the proposed Lowrey basis with an average revenue of 2.3 cents. The latter is made up of movements of iron and steel, ice, and miscellaneous.

Intrastate, Indiana.—There is comparatively little traffic of this class. The total amounts to but 1.04 per cent of the total interstate and intrastate 2-line movement. The smaller portion of 36.84 per cent moves and would move at the present and proposed Lowrey rates with average revenue of 2.5 and 3.5 cents corresponding to those rates. The commodities consist of iron and steel, and miscellaneous. The balance of this traffic or 63.16 per cent now moves and would move on rates over the present and proposed Lowrey basis, with an average revenue of 5.2 cents at both the present and proposed rates. The principal commodities are iron, pig and bloom; iron and steel; and cement.

Three-line hauls

Of the total 3-line traffic 33.62 per cent moves on the Lowrey rates, 31.34 per cent over, and 35.04 per cent under those rates. Due to the partial elimination of exceptions under the Lowrey basis, at the proposed rates those proportions would be 41.42 per cent on the Lowrey basis, 31.34 per cent over, and 27.24 per cent under that basis. The average revenue is 3.5 cents at the present rates and would be 4.2 cents at the proposed rate of 4 cents and exceptions. The excess average revenue over the present Lowrey rate of 3 cents and the pro-

posed Lowrey rate of 4 cents may be attributed mainly to a large movement of interstate traffic at rates over the Lowrey basis, presumably originating on the E., J. & E.

Interstate.—The 3-line interstate movement makes up 32.18 per cent of the total 3-line movement, the balance or 67.82 per cent being intrastate in Illinois with no 3-line movements wholly in Indiana. The interstate movement at the present Lowrey rate is 17.42 per cent of the total interstate 3-line traffic and 5.61 per cent of the total 3-line traffic. The average revenue on this traffic corresponds with the present and proposed Lowrey rates of 3 and 4 cents, respectively. At the proposed Lowrey rates the interstate movement strictly on that basis would be slightly increased to 17.70 per cent of the interstate 3-line movement and to 5.70 per cent of the total 3-line movement. The increase would be due to the elimination of some exceptions under the present Lowrey basis which now produce average revenue of only 2 cents, as compared with the present rate of 3 cents. The commodities embraced in this category which move at the present Lowrey rate of 3 cents, in order of their volume, consist of iron, pig and bloom; iron and steel; chemicals and explosives; miscellaneous; and refined petroleum. At the proposed rates grain would be added to those commodities, and all would move on the proposed rate of 4 cents.

The bulk of the interstate 3-line traffic or 75.94 per cent now moves and would move at rates over the Lowrey basis. The average revenue on this traffic is and would be 5.4 cents as compared with the present and proposed Lowrey rates of 3 and 4 cents respectively. The principal commodities embraced herein in order of their volume consist of an extensive movement of iron and steel; cement; rails and fastenings; agricultural implements; and other products of mines.

A small portion of the interstate 3-line movement or 6.36 per cent now moves and would continue to move on exceptions under the present and proposed Lowrey rates of 3 and 4 cents producing average revenue of 2.6 and 3.1 cents respectively. The bulk of this traffic consists of rail and fastenings, and iron and steel.

Intrastate, Illinois.—A large portion of this traffic amounting to 41.31 per cent of the Illinois intrastate traffic now moves on the present Lowrey rates with average revenue of 3 cents. By eliminating some present movements of iron, pig and bloom; iron and steel; and the entire movement of grain on exceptions under those rates which now earn average revenue of only 2.6 cents and placing those commodities on the Lowrey basis that percentage would be increased to 52.68 per cent at the proposed basis, with average revenue of 4 cents, which corresponds with the proposed Lowrey rate. This would consist of practically all classes of commodities. In order of their volume the principal commodities are those classed as miscellaneous; coke, iron and steel; grain; ice; clay, gravel, sand and stone; and iron, pig and bloom. A somewhat smaller portion or 10.16 per cent now moves at rates higher than the Lowrey basis of 3 cents with average revenue of 4.2 cents. Those same movements would continue on exceptions higher than the proposed Lowrey basis of 4 cents and would produce average earnings of 4.7 cents. This traffic consists mainly of iron and steel; coke; miscellaneous; agricultural implements; rail and fastenings; iron, pig and bloom. A considerable movement or 37.16 per cent of this intrastate traffic also moves on exceptions under the Lowrey basis producing average revenue of only 2.4 cents and would continue to so move on exceptions under the proposed rates with average revenue of 3.5 cents. A considerable movement of clay, gravel, sand and stone; miscellaneous; refined petroleum; and coke is embraced therein.

ORDERS

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 31st day of July, A. D. 1931

No. 19610

Switching Rates in the Chicago Switching District

It appearing, That a full investigation of the matters and things involved in the above-entitled proceeding has been had, and that the commission has on the date hereof, entered its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the common carriers by railroad operating as such, respondents in No. 19610, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before November 10, 1931, and thereafter to abstain from publishing, demanding, or collecting, for the interstate transportation of all commodities, in carloads, in switching service as described in said report, except railway equipment on its own wheels, between all points within the Chicago switching district as described in Appendix A to said report, rates and charges in excess of those prescribed in the succeeding paragraph hereof.

If is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before November 10, 1931, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply, to the interstate transportation of all commodities, in carloads, in switching service as described in said report, except railway equipment on its own wheels, between all points within the Chicago switching district, rates, charges, and minimum weights not in excess of those found by the commission in its said report to be reasonable.

No. 20006

Illinois Slag & Ballast Company

v.

Chicago, West Pullman & Southern Railroad Company et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

Investigation and Suspension Docket No. 2900

Switching Rates Between Points in the Chicago and Chicago Heights Districts

It appearing, That by order heretofore entered on April 29, 1927, the commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and decribed in said order, and suspended the operation of said schedules until November 30, 1927;

It further appearing, That the operation of said schedules has been voluntarily deferred by respondents until February 1, 1932;

And it further appearing, That a full investigation of the matters and things involved has been had, and that the commission has, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part thereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before November 10, 1931, upon notice to this commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act, without prejudice to the filing on statutory notice of new schedules in accordance with the conclusions expressed in the said report.

It is further ordered, That this proceeding be discontinued.

By the commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

U. S. Government Printing Office: 1931

APPENDIX B.

INTERSTATE COMMERCE COMMISSION

No. 19610[1]

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT

Submitted ..... Decided .....

Interstate all-commodity switching rates, in carloads, applicable within the Chicago switching district and between the district and Chicago Heights, found not unreasonable. Complaint dismissed.

Intrastate switching rates in Illinois and Indiana applicable within the Chicago switching district and between the district and Chicago Heights found not unduly preferential of intrastate shippers or unduly prejudicial to interstate shippers, and not to result in unjust discrimination against interstate commerce. Proceeding discontinued.

J. N. Davis, H. I. Allen, J. R. Barse, D. P. Connell, P. F. Gault, James Stillwell, H. D. Sheean, E. A. Smith, J. F. Connors, H. W. Schaffer, B. M. Hamilton, J. F. Cummins, H. R. Wilkinson, and J. F. Dooley, for railroads serving Chicago switching district.

G. W. Hufsmith and Q. R. Livinghouse, for Public Service Commission of Indiana; and G. H. Shafer for Illinois Commerce Commission.

[1] This report also embraces No. 24950, *Acme Steel Company, et al., v. Atchison, Topeka & Santa Fe Railway Company, et al.*

Luther M. Walter, J. S. Brown, Herbert J. Campbell, J. P. Haynes, J. B. Humphrey, R. B. Coapstick, R. I. Pierce, C. B. Cardy, M. S. Allison, C. E. Hoople, G. R. Gordon, W. J. Hammond, H. G. Brown, C. Kuhn, H. H. Singer, W. D. Lindsay, Harry C. Ames, S. L. Felton, John W. Bingham, H. L. Burkhart, Frank L. Sullivan, A. C. Hultgren, F. H. Belden, J. J. Low, G. N. Staat, L. A. Behrle, R. S. Waterbury, Wilbur LaRoe, Jr., H. G. Legan, C. D. Miller, A. Rundal, J. J. Schmicher, W. J. Womer, J. M. Campbell, Ralph Edgar Riley, Lloyd L. Thoms, C. T. Stripp, Alex Stuart, Charles A. Shank, William A. Moore, F. M. Garland, J. L. Roberts, and G. W. Cole for complainants, interveners, and other parties.

REPORT PROPOSED BY HOWARD C. FAUL AND W. B. WILBUR, EXAMINERS.

In the prior report, 177 I. C. C. 669, decided July 31, 1931, the Commission upon general investigation found that the switching rates proposed by respondents of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more line hauls, carload minimum 60,000 pounds, would not be unreasonable for the future for application within the Chicago switching district, and prescribed rates not in excess thereof to be

published on an all-commodity basis, except railway equipment on its own wheels. The same rates were found not unlawful for application between Chicago Heights, Ill., and the Chicago switching district, except in so far as they might be in conflict with the findings in No. 16116, *Indiana State Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 122 I. C. C. 81. The maintenance clause of No. 16116, however, has since been vacated. At the time of the prior proceedings there was pending before

the Illinois Commerce Commission its docket No. 17250, which involved the lawfulness of the schedules filed by Illinois carriers proposing to increase the so-called Lowrey[2] rates applicable intrastate in the Chicago switching district in Illinois to the same basis as proposed for interstate application, and also before the Public Service Commission of Indiana, its docket No. 8939, proposing similar increases in the Indiana intrastate switching rates. These cases were heard jointly with the general investigation in No. 19610. No specific finding was made or order entered as to the Illinois and Indiana intrastate rates but the commission, at page 711 of the report, stated:

> A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time.

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Subsequently, on August 26, 1931, both the Illinois and Indiana State Commissions found that the carriers had

[2] The Lowrey basis of rates is described on page 676 of the original report as follows: "During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke, and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents respectively, minimum 60,000 pounds.

failed to justify the increased rates proposed, and accordingly required their cancelation as of November 10, 1931. The respondent carriers, therefore, on September 10, 1931, filed a motion seeking appropriate findings and order authorizing and requiring them upon the record as made to establish the same switching rates to apply intrastate within Illinois and Indiana as was found reasonable for interstate application. Thereupon the commission on November 2, 1931, reopened the proceedings for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges is unduly prejudicial to interstate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as may be necessary to correct such violation or violations as may be found to exist.

A petition filed on behalf of various interests within the switching district seeking to have the Commission's order set aside and to reopen the case for further hearing was denied by the commission on October 12, 1931. Thereupon on December 28, 1931, the complaint of the Acme Steel Company, *et al.*, was filed, attacking the interstate rates which became effective on December 10, 1931, in compliance with the commission's decision in No. 19610, hereinafter referred to as the prior report. The motion of defendants to dismiss the complaint without hearing and their request for oral argument on the motion were overruled. The complaint accordingly was docketed as No. 24950, (listed in the margin on page 1 hereof), and assigned for hearing. The two cases were heard separately, but in order to prevent repetition and

to conserve the records it was stipulated that any pertinent or relative testimony in the record in one case should be considered as part of the record in the other case. Separate briefs were required to be filed, but in view of the nature of the testimony and the conclusions herein proposed it is found desirable to issue a consolidated report. Appropriate notice of the hearings was served upon the authorities of the States of Illinois and Indiana.

Rates herein are stated in cents per 100 pounds unless otherwise noted.

The Complaint Case.

In No. 24950 the complainant corporations, engaged in various lines of industry with plants located in the Chicago switching district and at Chicago Heights, by complaint filed December 28, 1931, allege that the interstate switching rates applicable to carload traffic between points in the Chicago switching district and between points in that district and Chicago Heights, which became effective December 10, 1931, in conformity with the commission's decision in the prior report, of 3 cents for 1-line, 3.5 cents for 2-line, and 4 cents for 3-or-more-line hauls, and the minimum of 60,000 pounds, are greater than the traffic will bear, and were and are unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act. Reasonable rates for the future and reparation are sought. However, at the hearing and on brief complainants recognized that "it is now, under the recent decision of the Supreme Court in the *Arizona Grocery case* impossible for the commission to award reparation by reason of damages due to the publication and application of rates found reasonable by the commission." But reparation is sought on shipments made in private tank

cars because of the failure of the carriers to compensate the shippers for the use of their privately-owned tank cars.

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The State commissions of Illinois and Indiana filed a joint petition of intervention. Intervening petitions also were filed by various other interests.

The facts set forth in the prior report will be repeated herein only to the extent necessary for clarification. The history of the switching rates within the district is discussed on page 676 thereof. The so-called all-commodity rates published under the Lowrey agreement, as subsequently changed by the general increases and reductions, became 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, minimum 60,000 pounds, which, as above stated, on December 10 were increased to 3 cents, 3.5 cents and 4 cents, respectively, minimum 60,000 pounds.

THE COST STUDY.

The details of the cost study, the formula used in connection therewith, and the criticisms of the carriers, the shippers, and the representatives of the Illinois and Indiana State commissions were set forth at length in the prior report. Similar criticisms were again advanced at the further hearings. The defendants submitted no additional cost data. Complainants point out that the prior record was closed on September 21, 1928, and contend that the test periods within which the unit costs were determined should have been made on all of the 35 switching carriers operating within the district, and for a longer and more recent period of time in order to bring the study down to date. Generally, their criticisms suggest greater refinement in arriving at the unit costs. They stated that the transportation, operating, traffic, and

competitive conditions have changed, those now obtaining and which will prevail in the future being substantially different from the conditions which existed during the past five years.

Complainants contend that the entire district should have been zoned as to expenses and investment, and the

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expenses and return on investment local to each zone allocated thereto, in order that the average costs assigned to switching movements would represent the expenses and return on investment only of the zones through which each car actually moved. To some extent this would also differentiate between heavy and light locomotives where the service in a particular zone required one type to the exclusion of the other. Complainants specify maintenance expenses which were not allocated to the particular place where the expense was incurred by the study roads. These expenses, however, were confined to the lines of the study road which incurred them. Complainants would eliminate any element of expense incurred at a particular place from an average cost applied elsewhere. They point to switching by the carriers at industries where the tracks are owned and maintained by the industries, but the element of maintenance incurred by the study roads on their own lines was represented in the average cost assigned to cars switched at industries. This subject was introduced in the former hearing. It was therein considered that if such a refinement were possible and had been attempted, it would have entailed a prodigious amount of labor, time, and expense in addition to what was consumed in the preparation of the study made. The total cost would not have been reduced thereby, and the unit costs, which in any event can not be definitely ascertained, would merely have been increased in certain zones and reduced in others.

Defendants apportioned a part of general expenses to switching on basis of the amount of other allocated expenses. Complainants object to that basis on the ground that it gives to every dollar expended for labor, material, and miscellaneous expenses the same weight, despite the fact that a constant relationship is not always present between expenses directly assignable to the various operations or between those expenses and general expenses. While the relationships which complainants refer to are

not constant, nevertheless the basis used has been recognized as equitable in a practical sense to determine costs in various lines of business over a long period of time. It is used for the apportionment of unassignable general expenses in the commission's Rules Governing The Separation Of Operating Expenses Between Freight Service And Passenger Service On Large Steam Railways effective January 1, 1920, and now in effect.

The formula provides for the distribution of 67 expense accounts. The remaining expense accounts are so-called optional accounts. Any allotment of the latter depends upon whether they bear any relationship to switching movements on the individual road. The switching roads distributed all accounts due to their service being entirely switching. It was found that the amount distributed from the 67 accounts on switching roads bore a ratio of approximately 90.8 per cent to the total distributed from all accounts. The trunk lines adopted that ratio to expand the amount they had distributed from the 67 accounts to the equivalent of a distribution of all accounts. Complainants assert that there was no justification for the foregoing procedure on the ground that the trunk lines are not comparable with the purely switching roads. Their position is that a one-line haul would be

charged on the same basis as a three-line haul, and an intradistrict movement on the same basis as a movement in connection with a line haul. This statement is somewhat vague in view of the fact that the record clearly indicates that under like conditions there are no different services required in the switching of a car in connection with a line haul than in an intradistrict movement other than either the initial or final terminal service. The same may be said in comparing a one-line haul with a three-line haul in an intradistrict movement, but in this case there would be two interchanges required in the three-line haul and none in the one-line haul. In each case the cars would be charged only for the respective

services rendered. The use of the factor to increase the distributed expenses to include a portion of the so-called optional accounts had the effect of distributing that portion to switching on basis of the distributed expenses.

In apportioning maintenance of tracks the carriers under a provision in the cost finding formula computed 3 miles of yard track as the equivalent of one mile of main line. No maintenance of main line track was included in the costs. The costs arrived at and presented in the original hearing reflected only the maintenance of yard tracks in accordance with that equation. Complainants direct attention to that provision and state that if the equation had been made it would have decreased the switching cost. This allegation of complainants appears to be without foundation.

Complainants show the total investment in road and equipment of nine switching carriers operating in the district, as well as the commission's valuation, together with the average rate of return of 7.89 per cent for the seven years ended December 31, 1931. They compare it

with the rate of return of 5.66 per cent for the year ended December 31, 1931. These data are based upon total investment and income. The return on investment devoted to the intradistrict switching under review is not shown. No conclusion can be drawn as to the return from intradistrict switching from these totals.

In the prior report, at page 711, the commission said:

> The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one-two, and three-or-more line movements are not excessive.
>
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At the further hearings herein the representatives of the State commissions again took the position, similar to the position of the shippers, that the increased rates had not been justified; and that the evidence as to cost taken in connection with the 1926 traffic analysis, the hearings having been closed in 1928, should be brought down to date to reflect the present day changed conditions. Some of the changed conditions enumerated since the prior record was closed are: (1) falling off in volume of traffic; (2) improvement in the highways within the district resulting in diversion of much additional tonnage from the rail lines for movement by truck; (3) the decline in value of many of the articles or commodities transported; (4)

reduction in wages and cost of supplies; and (5) curtailment in the amount of service rendered by the carriers to the industries within the district. It appears that some of the commodity prices are on a lower level than prevailed at the time of the prior hearings, and that there has been a falling off in tonnage within the district since the prior hearings. The witness for one of the brick-manufacturing concerns with plants within and outside the switching district, but in the vicinity of Chicago, testified that in 1926 they shipped approximately four hundred million bricks to points within the district, but that in 1931 the number dropped to approximately eighteen million bricks. Both periods being prior to the effective date of the interstate increases the loss in tonnage, of course, is not attributable to the increases in the interstate rates. Other witnesses testified to the decreased tonnage which has been moving since the close of the prior hearings, and much evidence was adduced which indicates that competition by truck has become more acute. However, this reduction in the volume of tonnage is by no means chargeable to truck competition alone, but as indicated above, may be attributed in large part to, and is indicative of, the then generally prevailing downward trend of business throughout the country. This

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is demonstrated by the following testimony of one of the witnesses:

> Industries, generally, and particularly the iron and steel industry, are buying proportionately less raw materials, which is reflected in the unit volume purchased. In other words: where commodities, in the past, might be purchased in multiples of carloads, a single carload or less carload would suffice for immediate delivery. These conditions lend themselves admirably to handling by truck. * * * What has been stated in connection with raw materials will

apply with equal force to the finished products shipped to the Chicago switching district.

Much of the testimony submitted in regard to truck competition related particularly to the heavy loading commodities, such as crushed stone, sand and gravel, brick and coke; and reference also was made to movements by boat and pipe line. An attempt was made to show the actual costs of movements by truck, but the figures differ widely, depending in part on whether the trucks are owned and operated by the shippers, and partly whether the movement was in contract trucks. The witness for one of the oil shipping concerns testified that deliveries by truck to eight of their stations would effect a saving of an average of $9.41 per car. A concern handling coke stated that the cost of shipping the coke in its trucks amounted to 18 cents per ton for a haul of approximately 4.5 miles, which they compared with the interstate rail rate for the two-line movement of 70 cents. The witness interested in the movement of crude tar stated that they could handle their traffic by barge at a rate less than 2.5 cents, and that if this intrastate rate is increased the rail carriers would lose all of the traffic. The witness for the concern manufacturing sulphuric acid and other chemicals testified that sulphuric acid can be trucked to its Indiana destinations at a cost of 31.5 cents per ton, which is 8.5 cents less than the present intrastate rate on this commodity, and that to some points pipe line deliveries can be made at 36 cents per ton.

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The evidence discloses that with respect to some traffic the carriers could not make rates low enough to regain the traffic from the trucks to the rail lines. It appears that because of the location of the particular buildings under construction at off-track points, the material would

of necessity have to be trucked for a long distance even though it would be hauled into Chicago by rail. In those instances it is clear that it is impossible for the rail lines to compete with the movement by truck under any basis of rates. Furthermore, the commission may not lawfully require reductions in rates below a reasonable level in an effort to keep traffic upon the rail lines or to meet motor truck or water competition. The commission in *Southern Class Rate Investigation*, 100 I. C. C. 513, at page 611, said:

> In fixing maximum reasonable rates, competition is not a factor which we may take into consideration. The carriers may, within limits, make low rates for the purpose of meeting competition, but we are without power to compel them to meet it.

The defendants offered no evidence in the complaint case. They took the position that the only issue involved is whether the rates established in conformity with the commission's order violate Section 1 of the Act, and that since the commission, upon a complete record which involved the reasonableness of the rates herein attacked, has entered its report and order, and rates in accordance therewith having been made effective on December 10, 1931, they were warranted in relying on the report and order made in the original case, the complaint having been filed but 13 days subsequent to the effective date of the new rates, and that there was presented no evidence or facts new or different from the facts previously of record. On brief they contend that the only difference

between the conditions which existed at the time the evidence in the original case was taken and at the time of the further hearings was the substantial decrease in the volume of traffic due to the general economic depression. The carriers call attention to the commission's decision

in *Pacific Mutual Door Co.* v. *A. A. R. R. Co.*, 101 I. C. C. 633, wherein at page 634, division 3 said:

> Defendants take the position that we are not bound by our former decision; and they, therefore, ask that the present case be decided on its merits. When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. The first step in the proceeding upon which complainant relies, was a complaint filed January 14, 1914. Since then several hearings have been had and decisions rendered bearing upon the situation. Since the report of January 16, 1923 * * * defendants and interveners have petitioned for rehearing, but that was denied. The evidence introduced by them in this case is substantially similar to that introduced in the record of the decided case. The present record does not furnish a sufficient reason for setting aside the previous finding of unreasonableness.

They urge that this language is appropriate and should be here adopted.

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The defendants further contend that the decrease in tonnage has resulted in increasing their unit costs due to the fact that units of traffic have greatly decreased, with no opportunity to reduce operating expenses correspondingly on account of the irreducible minimum having been reached. In other words, a decrease in volume of traffic unaccompanied by a proportionate decrease in operating expenses would cause unit costs to increase rather than diminish. And a reduction in total operating expenses alone will not support a conclusion that the present interstate rates should be adjusted downward under present traffic conditions.

The following table, compiled from exhibits submitted in support of their contention that the unit cost in

handling cars in the Chicago district has increased since the close of the original record in this case, depicts the situation for the years 1928 to 1931 with respect to the eight switching carriers[3] included in the cost study:

AVERAGES PER CAR HANDLED.

Operating Expenses	1928	1929	1930	1931
Maintenance of Way and Structures	$ .56	$ .53	$ .60	$ .53
Maintenance of Equipment	.63	.65	.66	.63
Traffic	.03	.03	.04	.04
Transportation	2.48	2.50	2.56	2.62
General	.16	.17	.20	.22
Total Operating Expenses	3.86	3.88	4.06	4.04
Tax Accruals	.48	.51	.45	.61
Total Operating Expenses and Tax Accruals	4.34	4.39	4.51	4.65
Operating Ratio	66.97%	67.70%	72.35%	74.11%

From the above it appears that the total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931.

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Respondents' exhibits further show that the total operating revenues for the same switching roads referred to above, but including the Chicago River & Indiana Railroad, for the year 1931 were approximately ten and one-half million dollars less than for the year 1928, whereas

[3] Baltimore & Ohio Chicago Terminal Railroad, Belt Railway of Chicago, Indiana Harbor Belt Railroad, Chicago & Illinois Western Railroad, Chicago Short Line Railway, Chicago, West Pullman & Southern Railroad, Illinois Northern Railway and Pullman Railroad.

the total operating expenses in 1931 for the same roads were only five and one-half million dollars less than in 1928. The carriers also urge that the proper and necessary railroads have not been made defendants, the Elgin, Joliet & Eastern Railroad and the Chicago Heights Terminal Transfer Railroad not being named as defendants. All the industries in Chicago Heights, except one, are located on the latter line. The rates applicable from Chicago Heights to points within the Chicago switching district are published in an agency tariff as joint rates to which the Chicago Heights Terminal Transfer Railroad is a party, and in view of the conclusions herein reached, further discussion of this matter appears unnecessary.

Comparison was made in the prior report of the rates applicable within the district with the scales of rates prescribed for road-haul movements in various cases, including No. 17000, Part 6, *Iron and Steel Articles*, 155 I. C. C. 517. The commission therein prescribed a scale of rates for application throughout official territory on a large list of iron and steel articles, the scale commencing with 6 cents for 5 miles and under. The carriers since have voluntarily reduced these interstate iron and steel rates for short hauls up to 100 miles, beginning with 3 cents, instead of 6 cents, for the 5-mile block. The rate for the 15 to 20 mile block, which represents the average haul within the switching district, is 5.25 cents. Based on the carload minimum of 40,000 pounds this latter rate produces a minimum carload revenue of $21. The average loading of iron and steel articles, however, is considerably in excess of the prescribed minimum,

averaging approximately 65,000 pounds per car. *Iron and Steel Articles, supra.* Based on the latter weight

the line-haul revenue under the 5.25-cent rate would be in excess of $34 per car. One of complainants' witnesses submitted an exhibit showing the minimum revenue per car derived under the interstate switching rates applicable in the Chicago district and between the district and Chicago Heights, as compared with the minimum per-car revenue derived from rates applicable on road-haul traffic on 82 different commodities for single and joint-line hauls between Illinois, Indiana, and Wisconsin points. Under the 60,000-pound minimum prescribed the revenue for the one, two and three-or-more-line switching movements is shown to be $18, $21 and $24 per car for average hauls of 13.19, 21.32 and 26.53 miles, respectively, within the district, and 31.66 miles for two-line and 33.42 miles for three-line hauls between the district and Chicago Heights, as compared with minimum per-car revenues for the road haul movements ranging from $12 to $24 under carload minima ranging from 14,000 to 30,000 pounds, for hauls of 11 to 183 miles. The witness, however, was not familiar with the extent of the movements under those rates, nor was the average loading shown for any of the commodities with which comparison was made. That witness contended for rates of 2.5, 3, and 3.5 cents, minimum 60,000 pounds, to apply on all commodities moving both interstate and intrastate within the Chicago switching district and between the district and Chicago Heights.

The witness for the Lehigh Portland Cement Company and the Marquette Cement Manufacturing Company, with plants located at Oglesby, Ill., in the La Salle, Ill., switching district, stated that prior to December 10, 1931, following the decision in *Atlas Portland Cement Co.* v. *C., B. & Q. R. R. Co.*, 81 I. C. C. 1, the rate on cement from Buffington, Ind., to Chicago, 22 miles, was 6.5 cents.

and that the contemporaneous rate from La Salle, 96 miles distant from Chicago, was 8 cents; but that effective with the Docket 19610 increases the Elgin, Joliet & Eastern Railroad canceled its line-haul rates and published in lieu thereof the switching rates which became effective within the Chicago district. This had the effect of increasing the spread Oglesby over Buffington to 5.8, 5.3 and 4.6 cents, respectively, for the one, two, and three-line movements from Buffington. This witness urged that any findings which would further reduce the rates on cement should specifically exclude the Buffington to Chicago rate. Under the scale prescribed in *Atlas Portland Cement Co., supra,* the rate for 20 miles, carload minimum 50,000 pounds, was 7 cents, resulting in a minimum charge of $35 per car. The shippers further call attention to the fact that the E., J. & E. is not a member of the Chicago Switching Committee in the Chicago district; that prior to December 10, 1931, it published its rates as line-haul rates which had been on the basis of 5 cents and 6.5 cents, but that effective on that date this carrier published the switching basis of rates, thus voluntarily shrinking its revenues and which further resulted in reduced divisions to the Chicago district carriers.

The fifth-class rate prescribed in the eastern class rate revision, is 11 cents for 5 miles and 12 cents for 20 miles; and the sixth-class rate 8 cents for 5 miles and 9 cents for 20 miles.

Various operating officials of the different carriers directing these switching movements in the Chicago district testified that the traffic is handled in a manner similar to the road-haul traffic, and that the operation of the switching trains is comparable to road-haul opera-

tions. The business is moved in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses, and both road-haul

and switching business is handled in the same trains. This testimony is substantiated by the witness for the Inland Steel Company who stated:

> Traffic handled in switching service within the Chicago switching district, to or from the plants of the Inland Steel Company, is accorded identically the same service as roadhaul cars that are received from or destined to points outside the district. These cars move in the same trains between the plant and the break-up yards of the Indiana Harbor Belt, and this in the same manner in which traffic was handled during the cost study period of 1927.

Complainants voiced objection to any comparison of switching rates with rates prescribed for line-haul movements, apparently on the ground that the cost of performing switching service is less than the cost involved in line-haul movements. Such contention, however, is repugnant to the pronouncement of the commission in *Stielow Bros. Co.* v. *C. & N. W. Ry. Co.*, 52 I. C. C. 339, wherein it was recognized that a switching service, especially where congestion prevails, is more expensive than a road haul for a like distance.

COMPARISON WITH RATES IN OTHER SWITCHING DISTRICTS.

Much testimony was offered to show that charges for switching in other switching districts, such as Buffalo, N. Y., Cincinnati, Cleveland and Toledo, Ohio, Detroit, Mich., Pittsburgh and Erie, Pa., St. Louis, Mo. and Duluth, Minn., are substantially lower than the rates

applying in the Chicago district for similar switching service. These witnesses stated that the Chicago district, due to the absence of grades, curves, tunnels, and expensive bridges, permits maximum train-load movements, as contrasted with the topography of the Cincinnati, Pittsburgh and St. Louis switching districts "where there are heavy grades, tunnels, and expensive bridges indicating costly switching operation performed at lower rates than apply in the Chicago district in addition to higher maintenance costs." In *Switching at St. Louis and East St. Louis,* 120 I. C. C. 216, at page 217, the commission, in referring to the St. Louis switching

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district, said: "The switching is done over practically level terrain." On brief, complainants "insist that the Commission should measure the reasonableness of the switching rates complained of by comparing them with switching rates in other territories the differences in transportation conditions considered * * *." No cost figures, however, were submitted to show the actual costs of handling the traffic in the compared districts. Neither was any attempt made to compare the average hauls in those districts with the average hauls within the Chicago district. In *Increased Switching Charges at Detroit,* 91 I. C. C. 82, at page 83, the switching hauls in the Detroit switching district are stated to range from 0.5 to 20 miles, with an average haul of about 8 miles. Certainly not any of the compared districts approach the magnitude of the Chicago district, which is approximately 40 miles in length and from 7 to 15 miles wide, comprising over 600 square miles. This area contrasted, for example, with the Pittsburgh switching district in which the maximum haul does not exceed 10 miles, may

not fairly be said to be a comparable district. Nor is any reference made to the relative property values per mile of road in Chicago as contrasted, for example, with the Toledo, Erie, and other switching districts referred to.

Complainants refer to the second supplemental report of the commission in Docket 21723, *Container Service*, 185 I. C. C. 787, decided July 11, 1932, calling particular attention to the following statement:

> Since our original decision the conditions of transportation confronting the railroads generally have been subjected to material change. The volume of traffic moved has radically decreased. Despite the unprecedented decrease in the volume of traffic generally, the number of trucks competing with the railroads and the intensity of that competition have materially increased. The transportation conditions affecting the respondents today were not in contemplation by us at the time of the original decision.

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They urge that the commission in the instant case likewise should take cognizance of the inroads being made by competing transportation agencies and require a reduction in the rates under consideration. Attention, however, is directed to the fact that the commission in the second supplemental report in the *Container case* did not require reductions in the rates of any carrier to meet competition by motor trucks. It merely suspended the effective date of its order to enable respondents which might desire to continue the use of container service to "have the same freedom of opportunity to meet truck competition" as is being practiced by other respondents. In other words in the *Container case* the carriers petitioned the commission for modification of the

prior order so as to permit them to meet competition by truck. In the instant case, however, the carriers are defending the reasonableness of the rates under attack.

TRUCKING COSTS.

Some of the carriers have contracts with truck companies for trucking between various stations within the switching district for which they pay charges ranging from 5 cents for 1.5 miles to 15 cents per 100 pounds for 17 miles, but these charges do not include loading or unloading. Comparison was made of the similarity of the trucking conditions within Chicago and the St. Louis, Mo., districts. It appeared that a cost study made within the St. Louis district developed road-haul costs of $1.014 per ton for average hauls of 2.13 miles, and that with the addition of the loading and unloading charges, clerical costs, etc., the total cost for an average load of 6.4 tons amounted to $1.56 per ton. Respondents submitted these figures to show that an increase in the intrastate rates to 60 cents, 70 cents and 80 cents per ton for one, two, and three-or-more-line hauls, respectively, would not cause diversion of the intrastate traffic to the trucks. On the other hand, considerable testimony was

offered by the shippers which indicates that their shipments can be, and are being moved by truck at lower costs than under the rail rates. One of the witnesses for one of the brick concerns which owns and operates its own trucks testified that, taking into consideration the loading and unloading charges, it costs 65 cents per ton more to ship by rail than if moved by truck. The cost for handling the brick under consideration by truck for 16 miles was stated to be 97.5 cents per ton. In this,

as in many other instances, however, the tonnage was destined to a non-rail point, which would have necessitated some movement by truck in addition to the rail movement.

Specific Commodities.

Much testimony was adduced on behalf of various parties interested in the rates on particular commodities, not only with respect to the level of the rates, but also in regard to competing transportation facilities, the decrease in the volume of the movement, etc.

Sand, Gravel, and Crushed Stone.—The witnesses on behalf of the sand, gravel, and crushed stone industries testified that a large percentage of this business is now moving by truck, and that the truck movement is rapidly increasing; also that the movement by water for the past two or three years has been substantial. One of the witnesses contended that there has been a material change in the transportation, sale, and distribution of stone since the prior hearings. He stated that stone at that time was sold on the basis of about 80 cents per ton at the quarry, but that the price gradually dropped to about 52 cents per ton in 1931, due in part to the keener competition and in part to the curtailed demand for the product. Among the reasons advanced by these interests for seeking a lower basis of rates than on the other

commodities were (1) movement in greater volume; (2) the low value of the product; (3) movement in open-top cars; (4) absence of loss and damage claims; and (5) that the average haul is shorter than on other commodities. It appears that of the total deliveries of stone made in 1930 only 14.4 per cent moved by truck, but that

in 1931 the truck deliveries had increased to 18.3 per cent, and that for the first four months of 1932 the movements by truck had increased to 31.2 per cent of the total deliveries. While these interests at the prior hearings contended for per-car charges of $20, $25 and $30 for one, two, and three-line movements, respectively, they now contend that those rates would not attract the business, and urge that rates of $15, $20, and $25 for minimum cars of 100,000 pounds capacity should be established, and which they feel would restore the movements to the railroads. Stone produced within the district comes into competition with gravel and sand moving in from points outside of the district. In the prior report, at page 698, the commission said:

> The producers of crushed stone also assert that gravel is produced and shipped largely from near-by points outside of the district which are located on trunk lines able to make local delivery, and that the points of production of crushed stone within the district are located on switching roads which require a connecting-line delivery. In other words, gravel now moves from near-by points outside of the district on single-line rates of 65 cents per ton, while the crushed stone referred to now moves within the district on 2-line switching rates of 50 cents per ton which, under the proposed adjustment, would be increased to 70 cents per ton, resulting in a spread of 5 cents over the gravel rates.
>
> The producers of crushed stone within the district are in accord with the general plan of a uniform rate basis and expressly discountenance a zoning plan, because of the discrimination which they allege generally results therefrom. Despite these views they suggest a different scale of rates per car on their commodity, as follows:

Weight	One line (per car)	Two line (per car)	Three line (per car)
60,000 pounds	$12	$15	$18
80,000 pounds	16	20	24
100,000 pounds	20	25	30

The adoption of the above scale would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present 1-line charge and decreases in all charges under the proposed all-commodity basis. It would aggravate an alleged prejudicial situation, general in its scope, said by outside producers to exist now in favor of the present switching district rates as compared with the rates into the district from Zones I, II and III.[5] Furthermore, its adoption would result in an unwarranted inconsistency within the district rate structure itself. Clear justification for any departures from the all-commodity basis is peculiarly necessary in this case in view of the fact that a uniform all-commodity basis of rates is desired by shippers and carriers alike, eliminating all consideration of the usual factors of distance, volume, loading, value, etc. Such a structure should be applied in the light of its reciprocal nature. To attempt to equalize advantages and disadvantages in specific instances by variations in the rates tends to defeat the purpose and intent of the structure itself.

[5] Zones I, II and III, embrace points within 50, 51 to 100, and 101 to 150 miles from Chicago, respectively. The corresponding 1-line rates are 65, 70, and 75 cents, and the connecting-line rates are 85, 90, and 95 cents on basis of net tons. *Chicago Gravel Co.* v. *Indiana Harbor Belt R. R. Co.*, 146 I. C. C. 101.

Grain and Grain Products.—The Board of Trade of the City of Chicago filed a separate brief in defense of the rates on grain and grain products. In general the representative of the Board adhered to the position taken in the original case; that is, that there is no substantial evidence to support the finding of reasonableness

with respect to the grain switching rates. He stated that while *grain products* present certain problems which do not arise with respect to the other commodities they are "in a sense bound up with * * * the other commodities," but strongly urged that the grain[4] switching rates differed materially from those affecting the rates with respect to grain products. He contends that the Lowrey or all-commodity basis was from the outset a contractual relation to which the grain interests were not a party, and that by mutual agreement the grain

rates were carried as an exception to the Lowrey basis. Similarly, a number of other commodities were not included in the Lowrey agreement and were accorded a different basis of rates.

Coal.—The South Chicago Coal & Dock Company, which owns and operates docks and yards at South Chicago, receives by boat and handles approximately 150,000 tons of coal per year. There have been no movements of this coal by rail for several years because, as alleged, of the high switching costs, the coal all being delivered by trucks to consumers in the Chicago district. The cost for movement by truck was stated to range from 30 cents to $1 per ton for a maximum haul of 17 miles, including delivery to the plants of the consumers. The witness testified that per-car charges of not to exceed $12, $15 and $18 for the one, two, and three-line hauls would be necessary to enable the railroads to handle this coal traffic.

Plant Refuse.—It was again urged, as in the former hearings, that plant refuse of no commercial value be accorded a lower basis than the general level of switch-

[4] See discussion on pp. 692-695 of the prior report.

ing rates in order that manufacturers might dispose of their refuse. It appears that the length of the hauls is substantially less than the average haul within the district and that the loading is heavier. On cross-examination it developed, however, that only intrastate movements are involved.

Other Commodities.—Much additional testimony was presented with respect to other commodities, including brick, petroleum products, sulphuric acid and other chemicals; crude tar from which is manufactured paving tar, roofing tar, and creosoting oil; coke, pig iron, etc. However, much of the testimony in regard thereto related to the question of the relationship between the interstate and the intrastate rates, and it will hereafter be discussed in connection with the Section 13 feature of the report.

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PRIVATE EQUIPMENT.

In the prior report, at pages 704 and 705, the commission said:

> The shippers, however, contend that the usual allowance of 1.5 cents per car-mile for road service is inequitable in the case of switching movements, due to the detention in the latter service being entirely out of proportion to the mileage made. No testimony was presented by the carriers in that connection. Clearly, it is the duty of carriers to provide reasonably adequate and suitable equipment for all traffic which they undertake to transport, and it does not necessarily follow from the mere fact that certain shippers are furnishing their own equipment that they are to be compensated therefor. It may be, and usually is, a distinct benefit and advantage to the shipper to use his own equipment. The record does not fully disclose to what extent the use of private equipment is made necessary through

failure of the carriers to maintain an adequate car supply, nor is it sufficiently comprehensive to determine what would be a fair and reasonable rental charge therefor. If the carriers and shippers should be unable to agree upon a fair charge for the use of private equipment, this feature of the case may again be brought to our attention for further hearing.

Approximately 93 per cent of the shipments made by the Standard Oil Company from their Whiting, Ind., plant to the Chicago district are in shipper-owned tank cars. The Standard Oil Company seeks reparation on all business moving interstate in their private tank cars since December 10, 1931. Their witness testified that a study made of the 1931 shipments moved into the district showed an average cost for the use of the tank cars of $5.10 per car. The record does not show the lengths of these hauls, nor the time consumed in the different movements.

The Grasselli Chemical Company, which owns and operates the American Tank Line, submitted an exhibit showing that the cost of operation per car during the year 1930 of the 710 tank cars owned by it, was $1.19 per day. They testified that the average number of days consumed in the single-line movements, both loaded and empty, was 5.7 days, for average hauls on the Indiana intrastate traffic of approximately 4 miles which, on the basis of the $1.19-cost per day results in a minimum cost of $6.78 per car. These figures, however, are based on the intrastate movements for which no allowance is made by the carriers under the existing 2-cent rate and

which, the witness urged, should be retained. On their interstate two-or-more-line movements to Illinois destinations they receive an allowance for the use of the tank

cars of 25 miles at 1.5 cents per mile, both loaded and empty.

This was the only evidence adduced at the further hearings relating to private equipment. In *Switching at St. Louis and East St. Louis, supra,* the question of the use of private equipment was discussed at length. The commission therein, at page 222 stated:

> * * * the fact that a carrier may permit shippers to furnish their own equipment does not mean that these shippers should receive compensation, unless the carrier fails to provide the necessary equipment. Whether or not it is necessary for respondent to rent equipment for the service in question is not clear. If it is necessary, our view is that the compensation to the car owner should be made through a rental charge rather than through a differential in freight rate.

It does not appear whether any or all of this private equipment was or is being used because of shipper convenience or through inability of the carriers to furnish the necessary tank cars. Notwithstanding the Commission's reference to these matters in the prior report the shippers failed to furnish the additional information at the further hearings. The record is utterly lacking in details from which a finding might be made whether reparation is due, or as to the amount thereof on any of the interstate movements in private equipment.

Chicago Heights, Ill.

Since 1907 the rates between Chicago Heights[5] and the Chicago switching district have been maintained on a parity with the rates applicable within the Chicago district. The switching at Chicago Heights is performed

[5] The history of the rates applicable between Chicago Heights and the Chicago Switching District is set forth on page 707 of the prior report.

by the Chicago Heights Terminal Transfer Railroad, a switching carrier serving practically all of the industries located at that point. Because of this fact there are no 1-line movements between Chicago Heights and the Chicago district, and the following table, therefore,

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compares the average hauls and the shortest and longest hauls for 2-line and 3-line movements with similar movements within the Chicago switching district:

	2-line movements			3-line movements		
	Average (miles)	Shortest (miles)	Longest (miles)	Average (miles)	Shortest (miles)	Longest (miles)
Within Chicago District	21.32	1.1	68.2	26.3	3.40	89.54
Between Chicago District and Chicago Heights	31.66	7.7	36.8	33.42	6.13	64.37

The Chicago Heights witness at the further hearings, as at the prior hearings, took the position that they are entitled to the same rates and should be on the same relative basis of rates as applicable within the Chicago switching district. Their shipments generally are loaded to the 60,000-pound minimum and, in many instances, much in excess of the prescribed minimum.

Minimum Weight.

While the complaint attacked the reasonableness of the 60,000 pound minimum, the witnesses, almost without exception, testified that their shipments could be loaded, and in fact in most instances were loaded, to and in excess of the 60,000-pound minimum. The paper interests, however, testified that most of their shipments moved to the Chicago switching district by truck because it was practically impossible for them to load a car to

60,000 pounds. Complainants compared this minimum with lower minima applicable on road-haul traffic between points in the Chicago switching district and points outside thereof, and also with a 50,000-pound minimum applicable within the Cleveland, Ohio, switching district. However, on brief they urge that "if the rates complained of herein be reduced complainants will waive the request for reduction in minimum, but if the rates are not reduced as a result of this complaint, then complainants ask earnestly for a reduction in the minimum to 50,000 pounds." As above stated, the evidence discloses that the traffic generally loads to and in excess

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of 60,000 pounds, and the record does not establish that the 60,000-pound minimum is unreasonable.

FINDINGS.

While considerable testimony was presented at the further hearings by various concerns, including the stone, sand, and gravel interests, the grain and grain products and coal interests, and concerns shipping primarily in tank cars, directed toward a showing that such commodities were entitled to rates lower than the present interstate all-commodity basis, the record does not disclose that the existing rates for the movements involved are unreasonably high for these or any other commodities which are moving on the all-commodity basis. Switching rates throughout the country generally move on an all-commodity or per-car basis, and because of the nature of the movements, the manner of handling, and the volume of the tonnage involved, the switching traffic is peculiarly adapted to an all-commodity basis of rates.

The commission should find that the interstate switching rates, carloads, and minimum weight applicable within the Chicago switching district and between the district and Chicago Heights, Ill., have not been shown to be unjust or unreasonable, and it is recommended that the complaint be dismissed.

The Section 13 Investigation.

Within the Chicago switching district are located more than 5,000 industries with private side tracks, and in addition numerous small manufacturers and distributors whose plants are not equipped with private side tracks. The district is honeycombed with a network of tracks and sidings over which the switching under consideration is performed. These proceedings embrace all of the 69 commodity groupings into which the traffic has been classified. In each of the groups are involved both interstate and intrastate movements. As previously stated, the interstate rates apply on an all-commodity basis, the same rate and minimum weight applying to each commodity, depending, of course, on the number of lines involved in the movements, but irrespective of dif-

ferences in the length of haul. Much of the intrastate traffic also moves on the so-called Lowrey basis. The shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements, some contending, however, that the level should not exceed the present intrastate rates, while others urged that the same level be maintained provided the all-commodity basis would not exceed 2.5, 3, and 3.5 cents for the one, two, and three-or-more-line

movements respectively. The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner. The district is divided by the Indiana-Illinois State line. On each side of this line are located industries which ship and receive commodities of the same general nature. It appears that since December 10, 1931, the effective date of the increased interstate rates, many of the shippers within the district have been routing their traffic over intrastate routes whenever such routes are available in order to secure the benefit of the lower Lowrey rates of 2.5, 2.5 and 3 cents for one, two, and three-or-more-line hauls, respectively, minimum 60,000 pounds. There are however many exceptions to that basis both over and under the Lowrey rates and different minima apply. To all of these intrastate rates, however have been added the emergency 10 per cent increases effective January 11, 1932, authorized in Ex Parte No. 103, *Fifteen Per Cent Case*, 1931, 178 I. C. C. 539; 179 I. C. C. 215. The minimum per-car charges on the commodities moving on the Lowrey basis, therefore, have been increased from $15 to $16.50 for the one-line and two-line movements, and from $18 to $19.80 per car for the three-or-more-line movements, with proportionate increases on commodities not moving on the Lowrey basis. The Ex Parte 103 increases, however, were not permitted to be added to the higher interstate switching rates which became effective December 10, 1931.

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The representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana stated that, inasmuch as only the commodities moving on the Lowrey basis of rates were before those commissions for deter-

mination under their suspension proceedings,[6] which were heard with the original proceeding in No. 19610, in so far as the exceptions to the Lowrey basis are concerned (other than the 10 per cent emergency increase), the carriers have made no effort to obtain approval of the State Commissions for any changes in those rates, and that no petition for reconsideration or rehearing was submitted by the carriers to either of those commissions with respect to the commodities moving on the Lowrey basis of rates. Furthermore, the witness for the grain interests stressed the fact that the bulk of grain switched within the Chicago district is between elevators located within the State of Illinois at rates not on the Lowrey basis, and that because the great preponderance of the switching movement is intrastate, and the State Commissions not having had an opportunity to pass upon the reasonableness of the intrastate grain switching rates, this commission should not invade the domain of the State authorities, particularly with respect to this traffic. Under the provisions of section 1 of the Act the commission has jurisdiction over the transportation of passengers or property only in interstate commerce. It derived its power to consider the relationship between interstate and intrastate rates, originally from section 3(1) and, since the amendment of February 28, 1920, from section 13. Paragraph (3) of section 13 provides that:

> Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, *made or imposed by*

[6] No general investigation was instituted either by the Illinois or the Indiana State Commissions at the time of the prior hearings.

> *authority of any state* * * *, the commission, before, proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding.

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The Illinois and Indiana State Commissions refused to permit the so-called Lowrey basis of rates to be increased within their respective states to the basis of the interstate all-commodity rates, which action might be held to be indicative of what the State commissions would do with respect to the exceptions to those rates if and when properly brought before them for consideration. Furthermore, if an intrastate rate voluntarily proposed by a carrier is allowed to be filed by a state commission, it is established under the laws of the State, and for this reason alone it is a rate made, though not imposed, by the authority of the State and comes within the words "made or imposed by authority of any State." *State of Florida* v. *United States*, 30 Fed. (2d) 116.

As previously indicated, one of the principal criticisms of the representatives of the Illinois and Indiana state commissions is that the traffic included in the study was not representative. In support of that statement they direct attention to the omission of the Chicago Junction Railway Company, hereinafter called the Chicago Junction, from the study, although in the month of September, 1926, that carrier handled 1,764 cars in one-line hauls as contrasted with a less number of one-line hauls on certain study roads. The Chicago Junction was not included in the cost study due to the volume of one line short haul undiversified traffic handled between packing houses on its line. Its movements range from 200 feet to a mile. It is obvious that those movements are not

representative of the intradistrict hauls generally performed within the district.[7]

In the prior report it was stated that "the shippers generally favor an all-commodity basis but most of them are opposed to any increases in their present rates." At the further hearings while still quite generally favoring

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an all-commodity basis, the shippers were practically unanimous that the basis should be no higher than the rates which were in effect prior to the December 10 increases, or the same as the effective intrastate rates. The representative of the Board of Trade of the City of Chicago, whose members deal in grain and grain products, took the position that the grain shippers did not contend for, nor agree to be included in, the all-commodity basis; that practically the entire movement of grain and the great preponderance of the movement of grain products within the switching district is intrastate, and that therefore interstate commerce is not discriminated against by the lower rates on intrastate movements of grain. Furthermore, the representatives of the various stone producers operating crushed stone plants within the switching district also urge that regardless of what rates might be found reasonable for the movement of other commodities, "the substantial difference in conditions surrounding the movement of stone, sand and gravel fully justifies such commodities being excepted and accorded a lower rate than might be properly applied on other commodities." This is con-

[7] At page 697 of the prior report the Commission stated:

"In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representatative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

trary to the position taken by the same witness at the former hearings as appears from the following excerpt of his testimony:

> Our position in the former hearing was to this effect, that crushed stone, sand and gravel should take the same basis as every other commodity; but I also proposed a per-car scale of charges to be applied as an all-commodity basis. In this proceeding I take the position that we do not favor an all-commodity basis, that the present rates intrastate in Illinois, as well as interstate, are entirely too high, are more than crushed stone as a class of traffic will bear, and are forcing us to other forms of transportation.

The intrastate movements within Indiana because of the physical layout and the relatively short hauls, it is contended, are not comparable as to cost of transportation, value of service, etc., with the movements within the district as a whole. The intrastate hauls within Illinois are somewhat longer than the hauls within Indiana, but they do not approach the average of the interstate hauls, except on one-line movements. In fact,

no interstate shipper at the further hearings contended that an intrastate competitor was obtaining a similar service at a lower rate so as to occasion undue preference and prejudice as between interstate and intrastate traffic.

There has been no specific showing that competition exists as between particular interstate shippers and intrastate shippers. No producers who ship in interstate commerce appeared in support of an increase in the lower intrastate rates and, so far as the record shows, no interstate shippers are injured by it. In *Rate on Sulphuric Acid From Natrona,* 148 I. C. C. 403, at page 408, the commission said:

> When we act affirmatively under section 13, we fix or declare what are and will be reasonable interstate rates and then find upon appropriate showing of similarity in transportation conditions and competition between shippers in interstate and intrastate commerce, and considerations of carrier revenue, that the State rates, where lower, create undue prejudice to shippers in interstate commerce and undue preference of shippers in intrastate commerce, or unjust discrimination against interstate commerce, and direct the removal of such undue prejudice and preference and unjust discrimination by the establishment intrastate of the rates found or declared to be reasonable for interstate transportation.

While undue prejudice and preference may be established by a preponderance of evidence, a mere showing of a disparity of rates and general declarations as to competition or injury, unsupported by evidentiary facts, are insufficient to support a finding of undue prejudice and preference. Evidence to sustain an order finding that intrastate rates are violative of Section 13 in that they unduly prejudice persons or places must be of equal dignity and probative value as the evidence required to sustain a finding under Section 3. *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 I. C. C. 319, 334.

In *Intrastate Rates Within Louisiana*, 164 I. C. C. 600, the commission, at page 616, said:

> No interstate shipper has testified that his profits have been curtailed through an enforced absorption of an unjustified difference in freight charges in the sale of his product, or that his business * * * has been materially lessened by reason of the intrastate rates here assailed.

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Preference and prejudice as between persons or localities does not obtain unless there is a showing that difference between the state and interstate rates is an

actual source of disadvantage to interstate traffic and a source of advantage to intrastate traffic. No shipper has made such a contention in this proceeding. The mere general showing that there are shippers in common lines of business, some of whom ship interstate and others intrastate does not constitute a sufficient showing under the act. There is no showing of specific intrastate movements on particular commodities as compared with specific interstate movements on like traffic sufficient to support a finding and order of undue preference of or advantage to shippers or localities in intrastate commerce to the undue prejudice of interstate shippers.

It was shown by witnesses for respondents that some of the railroads operating within the switching district, especially the strictly switching carriers which operate exclusively within the district, cannot move traffic from an industry located on the Indiana side of the line to an Indiana destination without operating in the State of Illinois; and likewise cannot move traffic from an industry located in Illinois going to a destination in Illinois within the district without operating in the State of Indiana. The Indiana Harbor Belt Railroad, for example, has industries located on its line served by it exclusively which are located on both sides of the Illinois-Indiana State Line, and some of the assembly yards and interchange tracks overlap the state line. Respondents witnesses testified with respect to certain industries dealing in iron and steel, animal feed and fertilizer, corn products, petroleum products, etc., whose hauls are interstate and which compete with industries located in Illinois and Indiana manufacturing the same commodities, the latter being able to ship on the lower intrastate basis of rates. While, as above stated, the testimony in-

dicates that a uniform basis of rates, both interstate and intrastate, within the Chicago switching district is

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desirable; and in a general way, that competitive conditions exist within the district, no interstate shipper presented any testimony of any specific instances of competition with intrastate shippers at the lower intrastate rates. In other words, no showing was made that any interstate shipper was damaged because his rates were higher than those contemporaneously applicable on the traffic of shippers in intrastate commerce, or that any disadvantage has resulted from the disparity of the rates. In fact, the record in No. 19610 is devoid of any shipper testimony of competition between interstate and intrastate traffic, notwithstanding the fact that during the hearings the attention of counsel for the shippers was called to the wording of the order of investigation in this connection. The record strongly suggests that the failure of any interstate shippers or manufacturers to testify in the proceeding may be accounted for in large part by the fact that most of them, having intrastate routes available, now have the benefit of the lower intrastate rates, and in part was actuated by a belief that their failure to present the necessary specific evidence of competition with intrastate traffic and shippers would ultimately result in the restoration of the prior-existing rates for interstate movements. Counsel for the shippers on brief stated:

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> No great amount of evidence on behalf of shippers was presented in this case. The carriers are seeking an order from the Interstate Commerce Commission requiring increases in state rates. *No*

shipper appeard to support the alleged claim of discrimination and prejudice against interstate and preference of intrastate traffic. The shippers who did appear sought to defend the present state rates.

Witnesses for the carriers further testified that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5, and 4 cents for one, two and three-or-more-line hauls, respectively, while the industries which have intrastate routes available may ship on the basis of 2.5 cents for one and two-line hauls, and 3 cents for three-or-more-line hauls, carload minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of the exceptions under the Lowrey rates applicable on intrastate traffic. One of respondents' exhibits shows the so-called natural or interstate, and the unnatural or intrastate routes. The witness stated that in order to develop economy and efficiency of service certain routes have been designated for the movement of certain types of traffic, and explained that the term "unnatural route," via which many industries have been routing their shipments since the December 10 increases, instead of permitting them to move via the natural interstate routes, was used because such movements take the cars against the flow of the traffic. In other words, movement over the intrastate routes in most instances requires special handling by the motive power because it is either partially or wholly in the opposite direction to the usual trend of the district traffic, which is governed by the preponderance of the traffic moving into or out of the district in connection with line hauls. This exhibit shows that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower-rated intrastate

routes which formerly would have moved over interstate routes, for which the respondents show an alleged loss in revenue of $7,656. The record discloses that in

some instances these unnatural or intrastate routes are not only shorter but involve less service. On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve the most economical movement. The extent of the round-about or circuitous hauls in connection with some of the so-called natural routes is disclosed in two of the illustrations shown on the exhibit where the natural or interstate routes involved hauls of 38 and 45 miles, as compared with the unnatural or intrastate hauls of only 13 and 23 miles, respectively. In this connection attention is called to the statement made in the prior report where, at page 692, the commission stated:

> The record leaves no doubt that there is need for improvement in the handling of this vast switching business, and we can not too strongly urge upon the carriers the necessity for prompt study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.

While the record indicates that some consideration was given to this feature, the carriers apparently have made little effort to comply with the commission's suggestions, and there is room for further study and much

improvement along this line. Prompt steps should be taken to effect these economies in the handling of this vast traffic throughout the district.

Exhibits submitted by the carriers indicate that since the interstate rates were increased on December 10, the percentage of intrastate movements within the district and between the district and Chicago Heights has increased. The table below compiled from these exhibits shows the ratios, in percentages, of the interstate and intrastate traffic for the week of November 9 to 15, 1931,

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prior to the effective date of the increases, as compared with the week January 11 to 17, 1932, which was subsequent to the time the interstate increases became effective:

CHICAGO SWITCHING DISTRICT TRAFFIC.

Number of lines in haul	Illinois Intrastate		Indiana Intrastate		Total Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
1	18.07	13.43	16.15	17.81	34.22	31.24	65.78	68.76
2	44.10	49.08	0.70	1.89	45.86	51.43	55.20	49.03
3	63.85	82.15	....	....	63.85	82.19	36.15	17.85
Composite 1, 2 and 3 line hauls	35.39	38.63	7.08	8.12	42.47	46.75	57.53	53.25

TRAFFIC BETWEEN CHICAGO AND CHICAGO HEIGHTS.

Number of lines in haul	Illinois Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
2	26.30	33.39	73.70	66.61
3	52.67	85.29	47.33	14.71
4	100.00	100.00	.....	.....
Composite 2, 3, and 4 line hauls	52.93	71.38	47.07	28.62

As contrasted with the above figures it appears from the table on page 679 of the original report that the interstate traffic within the district was 40.29 per cent of the entire movement in September, 1926, the Illinois intrastate movement being 53.31 per cent and the Indiana intrastate 6.40 per cent. The representatives of the Indiana Commission took the position that inasmuch as only 6 per cent of the switching traffic moves intrastate within Indiana there is no justification for increasing the rates on that traffic; furthermore, that while fifteen carriers were included in the cost study, only four[8] of them operate within Indiana, and that separate costs of those four carriers were not shown in the cost study.

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For the same month in 1926 only 24.29 per cent of the tonnage moved interstate between the Chicago switching district and Chicago Heights and 75.71 per cent moved intrastate within Illinois.

The relative lengths of the hauls of the interstate and intrastate *cost study* cars moving within the Chicago switching district are shown in the following table:

Average Hauls	Intrastate		Interstate
	Illinois	Indiana	
	Miles	Miles	Miles
One-line	14.7	6.3	15.0
Two-line	15.9	7.3	27.5
Three-line	23.4	...	34.2

From the above it appears that the Indiana intrastate average hauls are less than 50 per cent of the average Illinois intrastate hauls and that, while the Illinois in-

[8] The Pennsylvania Railroad, Elgin, Joliet & Eastern Railway, Baltimore & Ohio Chicago Terminal Railroad, and Indiana Harbor Belt Railroad.

trastate single-line average haul approximates the average one-line interstate haul, the two and three-line Illinois intrastate average hauls are considerably shorter than the interstate two and three-line average hauls. In view of this fact the representatives of the Illinois and Indiana State Commissions contend that the average costs of all traffic would not be representative of the costs of the intrastate traffic and that it, therefore, cannot be said that a lower rate on the intrastate traffic discriminates against the interstate traffic.

The following tables, also compiled from defendants' exhibits, show the present and estimated revenue based on the interstate rates separated as to intrastate traffic in Illinois and Indiana, and the estimated annual net loss, as well as the present and estimated revenue and the estimated annual net loss on the Chicago Heights traffic, for the month of September, 1926, which was the basis for the traffic test used in the original case, and also on the smaller volume of traffic moving during the period of depression, comparing the week of November 9 to 15, 1931, with the week of January 11 to 17, 1932:

WITHIN CHICAGO SWITCHING DISTRICT.

Traffic	Month of Sept., 1926	Estimated annual Net Loss	Week of Nov. 9-15, 1931	Estimated Annual Net Loss	Week of Jan. 11-17 1932	Estimated Annual Net Loss
Intrastate-Illinois—						
One Line Haul	$ 97,139.28	$1,165,671.36	$ 3,094.04	$ 266,727.59	$1,113.92	$114,837.11
Two " "	91,998.75	1,103,985.00	6,023.89	519,300.85	5,297.87	546,172.17
Three " "	34,527.06	414,324.72	1,802.50	155,387.93	2,344.51	241,702.06
Total	223,665.09	2,683,981.08	10,920.43	941,416.37	8,756.30	902,711.34
Intrastate-Indiana—						
One Line Haul	8,103.26	97,239.12	915.69	78,938.79	719.06	74,129.90
Two " "	* 249.59	* 2,995.08	* 104.23	* 8,985.34	80.90	8,340.20
Three " "	.....	.....	.....	.....	.....	.....
Total	7,853.67	94,244.04	811.46	69,953.45	799.96	82,470.10
Total Intrastate-Illinois and Indiana Combined	$231,518.76	$2,778,225.12	$11,731.89	$1,011,369.82	$9,556.26	$985,181.44

* Decrease in proposed revenue.

BETWEEN THE DISTRICT AND CHICAGO HEIGHTS.

	Month of Sept., 1926	Estimated annual Net Loss	Week of Nov. 9-15, 1931	Estimated Annual Net Loss	Week of Jan. 11-17 1932	Estimated Annual Net Loss
Intrastate-Illinois—						
Two Line Haul	$ 5,223.23	$ 62,678.76	$ 96.83	$ 8,347.41	$ 98.15	$10,118.56
Three " "	1,568.44	18,821.28	298.44	25,727.59	305.54	31,498.97
Four " "	436.04	5,232.48	140.10	12,077.59	158.71	16,361.85
Total	$ 7,227.71	$ 86,732.52	$ 535.37	$ 46,152.59	$ 562.40	$ 57,979.38

The respondents relied in large part upon such showing of the difference in revenue that would accrue to them under the present intrastate 1, 2 and 3-line rates as compared with the basis of rates found not unreasonable by the commission for interstate traffic. In arriving at the above figures it must be assumed, of course, that all of the intrastate traffic would have continued to move by rail at the higher rates. The decrease in tonnage since the September, 1926 movement is chargeable in large part to the general business depression, and in part to the diversion to motor truck movement.

Within the borders of the Chicago switching district are many improved highways and also navigable waterways which already move a substantial volume of this switching tonnage. To what extent additional tonnage would be diverted to these other agencies of transportation if the intrastate rates would be increased to the interstate basis can not definitely be determined, but the record abundantly indicates that considerable traffic would be lost to the trucks, and to some extent to the waterways and pipe lines.

The witness for the Inter-Lake Iron Corporation of Cleveland, Ohio, testified that they ship their pig iron by rail at the present intrastate rate of 40 cents per gross ton, minimum 100,000 pounds. He showed an average movement for the past five years of approximately 50,000 tons per year which produced an average yearly revenue in excess of $20,000, which revenue, acording to the witness, would be lost by the carriers if the rate would be increased.

The Grasselli Chemical Company, whose plant is located in the switching district at Grasselli, Ind., manufactures sulphuric acid and other chemicals. The com-

pany ships both interstate to Illinois and intrastate within Indiana, the preponderance of the movement being Indiana intrastate. Its witness testified that a study made by the company developed that sulphuric acid can be trucked to Indiana destinations at a cost of 31.5 cents per net ton,

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which is 8.5 cents less than the present intrastate rail rate; furthermore, that to some points pipe line deliveries can be made at 36 cents per ton, and that while his company is satisfied with the present 2-cent intrastate rate, it would not pay a rate of 3 cents.

The Barrett Company produces paving tar, roofing tar, and creosoting oil which are manufactured from crude tar. This crude tar is now moved by rail, but its traffic manager testified that the material can be handled by barge at a rate less than 2.5 cents, and that if this intrastate rate is increased the rail carriers will lose all of the traffic.

The witness for one of the crushed stone producers testified that his company had practically discontinued shipping crushed stone within the district by rail; that the emergency increases on the intrastate rates had diverted additional intrastate tonnage to the trucks, and that any further increases in those rates would result in loss of revenue to the carriers because the small remaining tonnage would be handled by truck or barge.

In *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, the Supreme Court, at page 586, stated:

> When we turn to paragraph 4, section 13, however, and find the commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision

and the purpose of Section 15a. If that purpose is interfered with by a disparity of intrastate rates, the commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable or unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words.

And in *Florida* v. *United States,* 282 U. S. 194, at pages 211 and 214, it said:

> In construing the statute this court has held that the general provision of section 13(4) prohibiting "unjust discrimination against interstate commerce" and authorizing the commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 * * *. The authority granted by section 13(4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate na-

> tional railway system.
>
> As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic shall pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. * * * In considering the authority of the commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. * * *
>
> The commission made no findings as to the rev-

enue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

The record does not indicate that an increase in the intrastate rates to the level of the interstate rates would result in increased revenues to the carriers. The testimony shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and also that some tonnage would be diverted to barges and pipe lines. Furthermore, the preponderance of the intra-district movement is intrastate, and there is but a slight margin between the existing intrastate and interstate rates. Certain of the intrastate rates, due to exceptions to the Lowrey basis, are on a higher level than the present interstate rates. The carriers show the difference between the total revenues which would be derived if the existing intrastate rates and the interstate rates were applied to the same volume of traffic. They rested their case primarily upon this showing to prove a violation of Section 13. But this is neither convincing nor adequate proof that an increase in the intrastate rates to the interstate basis would result in an increase in total revenue as there are present the other factors mentioned

above which would tend to decrease the volume of traffic sufficiently at least to offset any additional revenue which otherwise might be gained by an increase in the rates.

The commission should find that the maintenance of

intrastate rates and carload minimum weights on a lower basis than the corresponding rates and minimum weights, found not unreasonable and approved for interstate transportation in switching service, has not been shown to result in unjust discrimination against interstate commerce or in undue preference and advantage of persons and localities in intrastate commerce nor in undue prejudice and disadvantage to persons and localities in interstate commerce.

APPENDIX C.

18829

INTERSTATE COMMERCE COMMISSION

No. 19610[1]

SWITCHING RATES IN CHICAGO SWITCHING DISTRICT

Submitted April 28, 1933. Decided July 3, 1933

1. Interstate all-commodity switching rates, in carloads, applicable within the Chicago switching district and between the district and Chicago Heights, found not unreasonable. Complaint dismissed.
2. The maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana within the Chicago switching district and between the district and Chicago Heights lower than the corresponding interstate rates not shown to be unduly prejudicial to interstate shippers or localities, but to result in unjust discrimination against interstate commerce. Unjust discrimination ordered removed. Prior report, 177 I. C. C. 669.

J. N. Davis, H. I. Allen, J. R. Barse, D. P. Connell, P. F. Gault, James Stillwell, H. D. Sheean, E. A. Smith, J. F. Connors, H. W. Schaffer, B. M. Hamilton, J. F. Cummins, H. R. Wilkinson, and *J. F. Dooley* for railroads serving Chicago switching district.

G. W. Hufsmith and *O. R. Livinghouse* for Public Service Commission of Indiana; and *G. H. Shafer* for Illinois Commerce Commission.

Luther M. Walter, J. S. Brown, Herbert J. Campbell, J. P. Haynes, J. B. Humphrey, R. B. Coapstick, R. I. Pierce, C. B. Cardy, M. S. Allison, C. E. Hoople, G. R. Gordon, W. J. Hammond, H. G. Brown, C. Kuhn, H. H. Singer, W. D. Lindsay, Harry C. Ames, S. L. Felton, John W. Bingham, H. L. Burkhart, Frank L. Sullivan, A. C. Hultgren, F. H. Belden, J. J. Low, G. N. Staat, L. A. Behrle, R. S. Waterbury, Wilbur LaRoe, Jr., H. G. Legan, C. D. Miller, A. Rundal, J. J. Schmicker, W. J. Womer, J. M. Campbell, Ralph Edgar Riley, Lloyd L. Thomas, C. T. Stripp, Alex Stuart, Charles A. Shank, William A. Moore, F. M. Garland, J. L. Roberts, E. S. Gubernator, and *G. W. Cole* for complainants, interveners, and other parties.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions to the report proposed by the examiners were filed by the respondents in no. 19610, and by the complainants in no. 24950, to which certain of the parties replied, and the case was orally argued.

[1] This report also embraces No. 24950, Acme Steel Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.

Our conclusions in no. 19610 differ from those proposed by the examiners.

In the prior report, 177 I. C. C. 669, decided July 31 ,1931, upon general investigation we found that the switching rates proposed by respondents of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, carload minimum 60,000 pounds, would not be unreasonable for the future for application within the Chicago switching district, and prescribed rates not in excess thereof to be published on an all-commodity basis, except railway equipment on its own wheels. The same rates were found not unlawful for application between Chicago Heights, Ill., and the Chicago switching district, except insofar as they might be in conflict with the findings in No. 16116, *Indiana State Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 122 I. C. C. 81. The maintenance clause of no. 16116, however, since has been vacated. At the time of the prior proceedings there was pending before the Illinois Commerce Commission its Docket No. 17250, which involved the lawfulness of the schedules filed by Illinois carriers proposing to increase the so-called Lowrey[2] rates applicable intrastate in the Chicago switching district in Illinois to the same basis as proposed for interstate application, and also before the Public Service Commission of Indiana, its Docket No. 8939, proposing similar increases in the Indiana intrastate switching rates. These cases were heard jointly with the general investigation in no. 19610. No specific finding was made or order entered as to the Illinois and Indiana intrastate rates but, at page 711 of the report, we stated:

> A large percentage of the traffic under consideration is intrastate in character, but the record does not disclose any difference in the conditions surrounding the handling of the interstate and intrastate movements. In the hope that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein, no specific finding or order with regard to intrastate rates will be entered at this time.

Subsequently, on August 26, 1931, both the Illinois and Indiana State commissions found that the carriers had failed to justify the

[2] The Lowrey basis of rates is described on page 676 of the original report as follows: "During 1910 a joint committee was organized composed of shippers and carriers with the object of establishing some uniformity in the local switching rates. After many conferences various differences were harmonized and an agreement was entered into, since known as the Lowrey agreement, which was translated into an all-commodity tariff, effective August 1, 1911, establishing uniform individual and joint rates on all commodities with a few exceptions, such as coal, coke, and grain. The exception as to coal and coke was removed in June, 1927. The so-called all-commodity rates published under the Lowrey agreement were 1.5 cents for 1-line and 2-line hauls, and not to exceed 0.5 cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reduction in rates since 1911 the present all-commodity rates are 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more line hauls, as compared with the proposed rates of 3, 3.5, and 4 cents, respectively, minimum 60,000 pounds."

increased rates proposed, and required their cancelation as of November 10, 1931. The respondent carriers, therefore, on September 10, 1931, filed a motion seeking appropriate findings and order authorizing and requiring them upon the record as made to establish the same switching rates to apply intrastate within Illinois and Indiana as were found reasonable for interstate application. Thereupon, on November 2, 1931, we reopened the proceedings for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges is unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as may be necessary to correct such violation or violations as may be found to exist.

A petition filed on behalf of various interests within the switching district seeking to have the order set aside and to reopen the case for further hearing was denied on October 12, 1931. Thereupon on December 28, 1931, the complaint of the Acme Steel Company was filed, attacking the interstate rates which became effective on December 10, 1931, in compliance with our decision in no. 19610, hereinafter referred to as the prior report. The motion of defendants to dismiss the complaint without hearing and their request for oral argument on the motion were overruled. The complaint accordingly was docketed as no. 24950, (listed in the margin in footnote 1), and assigned for hearing. The two cases were heard separately, but in order to prevent repetition and to conserve the records it was stipulated that any pertinent or relative testimony in the record in one case should be considered as part of the record in the other case. Separate briefs were required to be filed, but in view of the nature of the testimony and the conclusions reached, the examiners issued a consolidated report. Appropriate notice of hearings was served upon the authorities of the States of Illinois and Indiana.

Rates herein are stated in cents per 100 pounds unless otherwise noted.

COMPLAINT CASE

In no. 24950 the complainant corporations, engaged in various lines of industry with plants located in the Chicago switching district and at Chicago Heights, by complaint filed December 28, 1931, allege that the interstate switching rates applicable to carload traffic

between points in the Chicago switching district and between points in that district and Chicago Heights, which became effective December 10, 1931, in conformity with the findings in the prior report, of 3 cents for 1-line, 3.5 cents for 2-line, and 4 cents for 3-or-more-line hauls, and the minimum of 60,000 pounds, are greater than the traffic will bear, and were and are unjust and unreasonable, in violation of section 1 of the act. Reasonable rates for the future and reparation are sought. However, at the hearing and on brief complainants recognized that "it is now, under the recent decision of the Supreme Court in the *Arizona Grocery case* impossible for the Commission to award reparation by reason of damages due to the publication and application of rates found reasonable by the Commission." But reparation is sought by the shippers for the use of their privately owned tank cars.

The State commissions of Illinois and Indiana filed a joint petition of intervention. Intervening petitions also were filed by various other interests.

The facts set forth in the prior report will be repeated herein only to the extent necessary for clarification. The history of the switching rates within the district is discussed on page 676 thereof. The so-called all-commodity rates published under the Lowrey agreement, as subsequently changed by the general increases and reductions, became 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, minimum 60,000 pounds, which, as above stated, on December 10 were increased to 3 cents, 3.5 cents and 4 cents, respectively, minimum 60,000 pounds.

COST STUDY

The details of the cost study, the formula used in connection therewith, and the criticisms of the carriers, the shippers, and the representatives of the Illinois and Indiana State commissions were set forth at length in the prior report. Similar criticisms were again advanced at the further hearings. The defendants submitted no additional cost data. Complainants point out that the prior record was closed on September 21, 1928, and contend that the test periods within which the unit costs were determined should have been made on all of the 35 switching carriers operating within the district, and for a longer and more recent period of time in order to bring the study down to date. Generally, their criticisms suggest greater refinement in arriving at the unit costs. They stated that the transportation, operating, traffic, and competitive conditions have changed, those now obtaining and which will prevail in the future being substantially different from the conditions which existed during the past five years.

Complainants contend that the entire district should have been zoned as to expenses and investment, and the expenses and return on investment local to each zone allocated thereto, in order that the average costs assigned to switching movements would represent the expenses and return on investment only of the zones through which each car actually moved. To some extent this would also differentiate between heavy and light locomotives where the service in a particular zone required one type to the exclusion of the other. Complainants specify maintenance expenses which were not allocated to the particular place where the expense was incurred by the study roads. These expenses, however, were confined to the lines of the study road which incurred them. Complainants would eliminate any element of expense incurred at a particular place from an average cost applied elsewhere. They point to switching by the carriers at industries where the tracks are owned and maintained by the industries, but the element of maintenance incurred by the study roads on their own lines was represented in the average cost assigned to cars switched at industries. This subject was considered in the prior report. The total cost under such formula would not have been reduced, and the unit costs, which in any event cannot be definitely ascertained, would merely have been increased in certain zones and reduced in others.

Defendants apportioned a part of general expenses to switching on basis of the amount of other allocated expenses. Complainants object to that basis on the ground that it gives to every dollar expended for labor, material, and miscellaneous expenses the same weight, despite the fact that a constant relationship is not always present between expenses directly assignable to the various operations or between those expenses and general expenses. While the relationships which complainants refer to are not constant, nevertheless the basis used is generally recognized as equitable to determine costs in various lines of business. It is used for the apportionment of unassignable general expenses in our rules governing the separation of operating expenses between freight service and passenger service on large steam railways, effective since January 1, 1920.

The formula provides for the distribution of 67 expense accounts. The remaining expense accounts are so-called optional accounts. Any allotment of the latter depends upon whether they bear any relationship to switching movements on the individual road. The switching roads distributed all accounts due to their service, being entirely switching. It was found that the amount distributed from the 67 accounts on switching roads bore a ratio of approximately 90.8 per cent to the total distributed from all accounts. The trunk lines adopted that ratio to expand the amount they had distributed

from the 67 accounts to the equivalent of a distribution of all accounts. Complainants assert that there was no justification for the foregoing procedure on the ground that the trunk lines are not comparable with the purely switching roads. Their position is that a 1-line haul would be charged on the same basis as a 3-line haul, and an intradistrict movement on the same basis as a movement in connection with a line haul. This statement is somewhat vague in view of the fact that the record clearly indicates that under like conditions there are no different services required in the switching of a car in connection with a line haul than in an intradistrict movement other than either the initial or final terminal service. The same may be said in comparing a 1-line haul with a 3-line haul in an intradistrict movement, but in this case there would be two interchanges required in the 3-line haul and none in the 1-line haul. In each case the cars would be charged only for the respective services rendered. The use of the factor to increase the distributed expenses to include a portion of the so-called optional accounts had the effect of distributing that portion to switching on basis of the distributed expenses.

In apportioning maintenance of tracks the carriers under a provision in the cost-finding formula computed 3 miles of yard track as the equivalent of 1 mile of main line. No maintenance of main-line track was included in the costs. The costs arrived at and presented in the original hearing reflected only the maintenance of yard tracks in accordance with that equation. Complainants direct attention to that provision and state that if the equation had been made it would have decreased the switching cost. This allegation appears to be without foundation.

Complainants show the total investment in road and equipment of nine switching carriers operating in the district, as well as the Commission's valuation, together with the average rate of return of 7.89 per cent for the seven years ended December 31, 1931. They compare it with the rate of return of 5.66 per cent for the year ended December 31, 1931. These data are based upon total investment and income. The return on investment devoted to the intradistrict switching under review is not shown. No convincing conclusion with regard to the return from intradistrict switching can be drawn from these totals.

In the prior report, at page 711, we said:

> The ascertainment of the cost of performing a particular service is always beset with serious difficulties, and this is particularly true in connection with switching costs within an area as congested as the Chicago switching district, which presents a complicated network of rail lines probably not equaled in any other section of the country. The cost study presented herein is perhaps

more exhaustive than any heretofore undertaken in any proceeding involving switching charges. Considering these facts and the further fact that all of the parties, both shippers and carriers, were practically unanimous in contending for the establishment of an all-commodity basis to apply throughout the Chicago switching district, it appears that the rates proposed for the one, two, and three-or-more line movements are not excessive.

At the further hearings herein the representatives of the State commissions again took the position, similar to the position of the shippers, that the increased rates had not been justified; and that the evidence as to cost taken in connection with the 1926 traffic analysis, the hearings having been closed in 1928, should be brought down to date to reflect the present-day changed conditions. Some of the changed conditions enumerated since the prior record was closed are (1) falling off in volume of traffic, (2) improvement in the highways within the district resulting in diversion of much additional tonnage from the rail lines for movement by truck, (3) the decline in value of many of the articles or commodities transported, (4) reduction in wages and cost of supplies, and (5) curtailment in the amount of service rendered by the carriers to the industries within the district. These matters against were stressed by counsel for complainants at the oral argument. The record discloses that some of the commodity prices are on a lower level than prevailed at the time of the prior hearings, and that there has been a falling off in tonnage within the district since the prior hearings. The witness for one of the brick-manufacturing concerns with plants within and outside the switching district, but in the vicinity of Chicago, testified that in 1926 they shipped approximately 400,000,000 bricks to points within the district, but that in 1931 the number dropped to approximately 18,000,000 bricks. Both periods being prior to the effective date of the interstate increases the loss in tonnage, of course, is not attributable to the increases in the interstate rates. Other witnesses testified to the decreased tonnage which has been moving since the close of the prior hearings, and much evidence was adduced which indicates that competition by truck has become more acute. However, this reduction in the volume of tonnage is by no means chargeable to truck competition alone, but as indicated above, may be attributed in large part to, and is indicative of, the then generally prevailing downward trend of business throughout the country. This is demonstrated by the following testimony of one of the witnesses:

Industries, generally, and particularly the iron and steel industry, are buying proportionately less raw materials, which is reflected in the unit volume purchased. In other words, where commodities, in the past, might be purchased in multiples of carloads, a single carload or less carload would suffice for imme-

diate delivery. These conditions lend themselves admirably to handling by truck. * * * What has been stated in connection with raw materials will apply with equal force to the finished products shipped to the Chicago switching district.

Much of the testimony submitted in regard to truck competition related particularly to the heavy-loading commodities, such as crushed stone, sand and gravel, brick and coke; and reference also was made to movements by boat and pipe line. An attempt was made to show the actual costs of movements by truck, but the figures differ widely, depending in part on whether the trucks are owned and operated by the shippers, and partly whether the movement was in contract trucks. The witness for one of the oil-shipping concerns testified that deliveries by truck to eight of their stations would effect a saving of an average of $9.41 per car. A concern handling coke stated that the cost of shipping the coke in its trucks amounted to 18 cents per ton for a haul of approximately 4.5 miles, which they compared with the interstate rail rate for the 2-line movement of 70 cents. The witness interested in the movement of crude tar stated that they could handle their traffic by barge at a rate less than 2.5 cents, and that if this intrastate rate is increased the rail carriers would lose all of the traffic. The witness for the concern manufacturing sulphuric acid and other chemicals testified that sulphuric acid can be trucked to its Indiana destinations at a cost of 31.5 cents per ton, which is 8.5 cents less than the present intrastate rate on this commodity, and that, to some points, pipe-line deliveries can be made at 36 cents per ton.

The evidence discloses that with respect to some traffic the carriers could not make rates low enough to regain the traffic from the trucks to the rail lines. It appears that because of the location of the particular buildings under construction at off-track points, the material would of necessity have to be trucked for some distance even though the initial movement would be by rail. In those instances it is clear that it is impossible for the rail lines to compete with the movement by truck under any basis of rates. Furthermore, we may not lawfully require reductions in rates below a reasonable level in an effort to keep traffic upon the rail lines or to meet motor-truck or water competition. In *Southern Class Rate Investigation*, 100 I. C. C. 513, at page 611, we said:

In fixing maximum reasonable rates, competition is not a factor which we may take into consideration. The carriers may, within limits, make low rates for the purpose of meeting competition, but we are without power to compel them to meet it.

The defendants offered no evidence in the complaint case. They took the position that the only issue involved is whether the rates established in conformity with our order violate section 1 of the act, and that since the Commission, upon a complete record which involved the reasonableness of the rates herein attacked, has entered its report and order, and rates in accordance therewith having been made effective on December 10, 1931, they were warranted in relying on the report and order made in the original case, the complaint having been filed but 13 days subsequent to the effective date of the new rates, and that there was presented no evidence or facts new or different from the facts previously of record. On brief they contend that the only difference between the conditions which existed at the time the evidence in the original case was taken and at the time of the further hearings was the substantial decrease in the volume of traffic due to the general economic depression. The carriers call attention to the decision in *Pacific Mutual Door Co.* v. *A. A. R. R. Co.*, 101 I. C. C. 633, wherein at page 634, division 3 said:

> Defendants take the position that we are not bound by our former decision; and they, therefore, ask that the present case be decided on its merits. When a given situation has been fully considered and deliberately passed upon, that decision ought not to be disregarded and the question kept open indefinitely unless good cause is shown for the adoption of a different course. The first step in the proceeding upon which complainant relies, was a complaint filed January 14, 1914. Since then several hearings have been had and decisions rendered bearing upon the situation. Since the report of January 16, 1923 * * * defendants and interveners have petitioned for rehearing, but that was denied. The evidence introduced by them in this case is substantially similar to that introduced in the record of the decided case. The present record does not furnish a sufficient reason for setting aside the previous finding of unreasonableness.

They urge that this language is appropriate and should be here adopted.

The carriers further contend that the decrease in tonnage has resulted in increasing their unit costs due to the fact that units of traffic have greatly decreased, with no opportunity to reduce operating expenses correspondingly on account of the irreducible minimum having been reached. In other words, a decrease in volume of traffic unaccompanied by a proportionate decrease in operating expenses would cause unit costs to increase rather than diminish. And a reduction in total operating expenses alone will not support a conclusion that the present interstate rates should be adjusted downward under present traffic conditions.

The following table, compiled from exhibits submitted in support of their contention that the unit cost in handling cars in the Chicago

district has increased since the close of the original record in this case, depicts the situation for the years 1928 to 1931 with respect to the eight switching carriers[3] included in the cost study:

Operating expenses	Averages per car handled			
	1928	1929	1930	1931
Maintenance of way and structures	$0.56	$0.53	$0.60	$0.53
Maintenance of equipment	.63	.65	.66	.63
Traffic	.03	.03	.04	.04
Transportation	2.48	2.50	2.56	2.62
General	.166	.17	.20	.22
Total operating expenses	3.86	3.88	4.06	4.04
Tax accruals	.48	.51	.45	.61
Total operating expense and tax accruals	4.34	4.39	4.51	4.65
Operating ratio (percent)	(66.97)	(67.70)	(72.35)	(74.11)

From the above it appears that the total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931. At the oral argument, however, complainants' counsel called attention to the showing of record that the average cost per car handled by the various switching roads for the year 1931 was less than the average cost for the 6-year period ended with 1931.

Defendants' exhibits further show that the total operating revenues for the same switching roads referred to above, but including the Chicago River & Indiana Railroad, for the year 1931 were approximately $10,500,000 less than for the year 1928, whereas the total operating expenses in 1931 for the same roads were only $5,500,000 less than in 1928. The carriers also urge that all of the proper and necessary railroads have not been made defendants, the Elgin, Joliet & Eastern Railroad and the Chicago Heights Terminal Transfer Railroad not being named as defendants. All industries in Chicago Heights, except one, are located on the latter line. The rates applicable from Chicago Heights to points within the Chicago switching district are published in an agency tariff as joint rates to which the Chicago Heights Terminal Transfer Railroad is a party, and in view of the conclusions herein reached, further discussion of this matter appears unnecessary.

Comparison was made in the prior report of the rates applicable within the district with the scales of rates prescribed for road-haul movements in various cases, including No. 17000, Part 6, *Iron and Steel Articles*, 155 I. C. C. 517. We therein prescribed a scale of rates for application throughout official territory on a large list of iron and steel articles, the scale commencing with 6 cents for 5 miles and under. Subsequently the carriers voluntarily reduced these inter-

[3] Baltimore & Ohio Chicago Terminal Railroad, Belt Railway of Chicago, Indiana Harbor Belt Railroad, Chicago & Illinois Western Railroad, Chicago Short Line Railway, Chicago, West Pullman & Southern Railroad, Illinois Northern Railway and Pullman Railroad.

state iron and steel rates for short hauls up to 100 miles, beginning with 3 cents, instead of 6 cents, for the 5-mile block. The rate for the 15 to 20 mile block, which represents the average haul within the switching district, is 5.25 cents. Based on the carload minimum of 40,000 pounds this latter rate produces a minimum carload revenue of $21. The average loading of iron and steel articles, however, is considerably in excess of the prescribed minimum, averaging approximately 65,000 pounds per car. *Iron and Steel Articles, supra.* Based on the latter weight the line-haul revenue under the 5.25-cent rate would be in excess of $34 per car. One of complainants' witnesses submitted an exhibit showing the minimum revenue per car derived under the interstate switching rates applicable in the Chicago district and between the district and Chicago Heights, as compared with the minimum per car revenue derived from rates applicable on road-haul traffic on 82 different commodities for single-line and joint-line hauls between Illinois, Indiana, and Wisconsin points. Under the 60,000-pound minimum prescribed the revenue for the one, two and three-or-more-line switching movements is shown to be $18, $21, and $24 per car for average hauls of 13.19, 21.32, and 26.53 miles respectively, within the district, and 31.66 miles for 2-line and 33.42 miles for 3-line hauls between the district and Chicago Heights, as compared with minimum per car revenues for the road-haul movements ranging from $12 to $24 under carload minima ranging from 14,000 to 30,000 pounds, for hauls of 11 to 183 miles. The witness, however, was not familiar with the extent of the movements under those rates, nor was the average loading shown for any of the commodities with which comparison was made. That witness contended for rates of 2.5, 3, and 3.5 cents, minimum 60,000 pounds, to apply on all commodities moving both interstate and intrastate within the Chicago switching district and between the district and Chicago Heights. On oral argument counsel representing most of the complainants contended that per car charges, based on the present intrastate rates plus the emergency charges, of $16.50 for the 1-line and 2-line hauls and $19.80 for 3-or-more-line hauls would be maximum reasonable charges for both interstate and intrastate movements.

The witness for the Lehigh Portland Cement Company and the Marquette Cement Manufacturing Company, with plants located at Oglesby, Ill., in the LaSalle, Ill., switching district, stated that prior to December 10, 1931, following the decision in *Atlas Portland Cement Co.* v. *C., B. & Q. R. R. Co.*, 81 I. C. C. 1, the rate on cement from Buffington, Ind., to Chicago, 22 miles was 6.5 cents, and that the contemporaneous rate from LaSalle, 96 miles distant from Chi-

cago, was 8 cents, but that, effective with the docket 19610 increases, the Elgin, Joliet & Eastern Railroad canceled its line-haul rates and published in lieu thereof the switching rates which became effective within the Chicago district. This had the effect of increasing the spread, Oglesby over Buffington, to 5.8, 5.3, and 4.6 cents respectively, for the one, two, and three-line movements from Buffington. This witness urged that any findings which would further reduce the rates on cement should specifically exclude the Buffington to Chicago rate. Under the scale prescribed in *Atlas Portland Cement Co., supra*, the rate for 20 miles, carload minimum 50,000 pounds, was 7 cents, resulting in a minimum charge of $35 per car. The shippers further call attention to the fact that the E., J. & E. is not a member of the Chicago switching committee in the Chicago district; that prior to December 10, 1931, it published its rates as line-haul rates which had been on the basis of 5 cents and 6.5 cents, but that effective on that date this carrier published the switching basis of rates, thus voluntarily shrinking its revenues and which further resulted in reduced divisions to the Chicago district carriers.

The fifth-class rate prescribed in the eastern class-rate revision, is 11 cents for 5 miles and 12 cents for 20 miles, and the sixth-class rate is 8 cents for 5 miles and 9 cents for 20 miles.

Various operating officials of the different carriers directing these switching movements in the Chicago district testified that the traffic is handled in a manner similar to the road-haul traffic, and that the operation of the switching trains is comparable to road-haul operations. The business is moved in regular transfer trains consisting of cars for both interstate and intrastate movements, operated under full crews with the air coupled up and supplied with cabooses, and both road-haul and switching business is handled in the same trains. This testimony is substantiated by the witness for the Inland Steel Company who stated:

> Traffic handled in switching service within the Chicago switching district, to or from the plants of the Inland Steel Company, is accorded identically the same service as road-haul cars that are received from or destined to points outside the district. These cars move in the same trains between the plant and the break-up yards of the Indiana Harbor Belt, and this is the same manner in which traffic was handled during the cost study period of 1927.

Complainants voice objection to any comparison of switching rates with rates prescribed for line-haul movements, apparently on the ground that the cost of performing switching service is less than the cost involved in line-haul movements. In *Stiglow Bros. Co. v. C. & N. W. Ry. Co.*, 52 I. C. C. 339, it was recognized that a switching

service, especially where congestion prevails, is more expensive than a road haul for a like distance.

COMPARISON WITH RATES IN OTHER SWITCHING DISTRICTS

Much testimony was offered to show that charges for switching in other switching districts, such as Buffalo, N. Y., Cincinnati, Cleveland and Toledo, Ohio, Detroit, Mich., Pittsburgh and Erie, Pa., St. Louis, Mo., and Duluth, Minn., are substantially lower than the rates applying in the Chicago district for similar switching service. These witnesses stated that the Chicago district, due to the absence of grades, curves, tunnels, and expensive bridges, permits maximum trainload movements, as contrasted with the topography of the Cincinnati, Pittsburgh and St. Louis switching districts "where there are heavy grades, tunnels, and expensive bridges indicating costly switching operation performed at lower rates than apply in the Chicago district in addition to higher maintenance costs." In *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216, at page 217, in referring to the St. Louis switching district, we said: "The switching is done over practically level terrain." On brief, complainants—

insist that the Commission should measure the reasonableness of the switching rates complained of by comparing them with switching rates in other territories the differences in transportation conditions considered * * *.

No cost figures, however, were submitted to show the actual costs of handling the traffic in the compared districts. Neither was any attempt made to compare the average hauls in those districts with the average hauls within the Chicago district. In *Increased Switching Charges at Detroit*, 91 I. C. C. 82, at page 83, the switching hauls in the Detroit switching district are stated to range from 0.5 to 20 miles, with an average haul of about 8 miles. Certainly not any of the compared districts approach the magnitude of the Chicago district, which is approximately 40 miles in length and from 7 to 15 miles wide, comprising over 600 square miles. This area contrasted, for example, with the Pittsburgh switching district in which the maximum haul does not exceed 10 miles, may not fairly be said to be a comparable district. Nor is any reference made to the relative property values per mile of road in Chicago, as contrasted, for example, with the Toledo, Erie, and other switching districts referred to.

Complainants refer to our second supplemental report in Docket No. 21723, *Container Service*, 185 I. C. C. 787, decided July 11, 1932, calling particular attention to the following statement:

Since our original decision the conditions of transportation confronting the railroads generally have been subjected to material change. The volume of

traffic moved has radically decreased. Despite the unprecedented decrease in the volume of traffic generally, the number of trucks competing with the railroads and the intensity of that competition have materially increased. The transportation conditions affecting the respondents today were not in contemplation by us at the time of the original decision.

They urge that in the instant case we likewise should take cognizance of the inroads being made by competing transportation agencies and require a reduction in the rates under consideration. Attention, however, is directed to the fact that in the second supplemental report in the *Container case*, we did not require reductions in the rates of any carrier to meet competition by motor trucks. We merely suspended the effective date of our order to enable respondents which might desire to continue the use of container service to "have the same freedom of opportunity to meet truck competition" as is being practiced by other respondents. In other words, in the *Container case* the carriers petitioned for modification of the prior order so as to permit them to meet competition by truck. In the instant case, however, the carriers are defending the reasonableness of the rates under attack. The switching rates of 3, 3.5, and 4 cents for the one, two, and three-line hauls, respectively, which were approved in the prior report, are maximum reasonable rates. If the carriers find it necessary, because of truck or other competition, to meet such competitive conditions they are free to depart from these maximum rates, provided such departures will not result in undue preference or prejudice.

TRUCKING COSTS

Some of the carriers have contracts with truck companies for trucking between various stations within the switching district, for which they pay charges ranging from 5 cents for 1.5 miles to 15 cents per 100 pounds for 17 miles, but these charges do not include loading or unloading. Comparison was made of the similarity of the trucking conditions within Chicago and the St. Louis, Mo., districts. It appeared that a cost study made within the St. Louis district developed road-haul costs of $1.014 per ton for average hauls of 2.13 miles, and that with the addition of the loading and unloading charges, clerical costs, etc., the total cost for an average load of 6.4 tons amounted to $1.56 per ton. Repondents submitted these figures to show that an increase in the intrastate rates to 60 cents, 70 cents, and 80 cents per ton for one, two, and three-or-more line hauls, respectively, would not cause diversion of the intrastate traffic to the trucks. On the other hand, considerable testimony was offered by the shippers which indicates that their shipments

can be, and are being moved by truck at lower costs than under the rail rates. One of the witnesses for one of the brick concerns which owns and operates its own trucks testified that, taking into consideration the loading and unloading charges, it costs 65 cents per ton more to ship by rail than if moved by truck. The cost of handling the brick under consideration by truck for 16 miles was stated to be 97.5 cents per ton. In this, as in many other instances, however, the tonnage was destined to a nonrail point, which would have necessitated some movement by truck in addition to the rail haul.

SPECIFIC COMMODITIES.

Much testimony was adduced on behalf of various parties interested in the rates on particular commodities, not only with respect to the level of the rates, but also in regard to competing transportation facilities, the decrease in the volume of the movement, etc.

Sand, gravel, and crushed stone.—The witnesses on behalf of the sand, gravel, and crushed-stone industries testified that a large percentage of this business is now moving by truck, and that the truck movement is rapidly increasing; also that the movement by water for the past two or three years has been substantial. One of the witnesses contended that there has been a material change in the transportation, sale, and distribution of stone since the prior hearings. He stated that stone at that time was sold on the basis of about 80 cents per ton at the quarry, but that the price gradually dropped to about 52 cents per ton in 1931, due in part to the keener competition and in part to the curtailed demand for the product. Among the reasons advanced by these interests for seeking a lower basis of rates than on the other commodities were (1) movement in greater volume, (2) the low value of the product, (3) movement in open-top cars, (4) absence of loss and damage claims, and (5) that the average haul is shorter than on other commodities. It appears that of the total deliveries of stone made in 1930 only 14.4 per cent moved by truck, but that in 1931 the truck deliveries had increased to 18.3 per cent, and that for the first four months of 1932 the movements by truck had increased to 31.2 per cent of the total deliveries. While these interests at the prior hearings contended for per car charges of $20, $25, and $30 for one, two and three-line movements, respectively, at the further hearings they contended that those rates would not attract the business, and urged that rates of $15, $20, and $25 for minimum cars of 100,000 pounds capacity should be established. At the oral argument they took the position that rates of $12, $15, and $20 per car for the respective hauls would be necessary to restore the movements to the railroads. Stone produced within the district

comes into competition with gravel and sand moving in from points outside of the district. In the prior report, at page 698, we said:

> The producers of crushed stone also assert that gravel is produced and shipped largely from nearby points outside of the district which are located on trunk lines able to make local delivery, and that the points of production of crushed stone within the district are located on switching roads which require a connecting-line delivery. In other words, gravel now moves from nearby points outside of the district on single-line rates of 65 cents per ton, while the crushed stone referred to now moves within the district on 2-line switching rates of 50 cents per ton which, under the proposed adjustment, would be increased to 70 cents per ton, resulting in a spread of 5 cents over the gravel rates.
>
> The producers of crushed stone within the district are in accord with the general plan of a uniform rate basis and expressly discountenance a zoning plan, because of the discrimination which they allege generally results therefrom. Despite those views they suggest a different scale of rates per car on their commodity, as follows:

Weight	One line (per car)	Two line (per car)	Three line (per car)
60,000 pounds	$12	$15	$18
80,000 pounds	16	20	24
100,000 pounds	20	25	30

The adoption of the above scale would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present 1-line charge and decreases in all charges under the proposed all-commodity basis. It would aggravate an alleged prejudicial situation, general in its scope, said by outside producers to exist now in favor of the present switching district rates as compared with the rates into the district from Zones I, II and III.* Furthermore, its adoption would result in an unwarranted inconsistency within the district rate structure itself. Clear justification for any departures from the all-commodity basis is peculiarly necessary in this case in view of the fact that a uniform all-commodity basis of rates is desired by shippers and carriers alike, eliminating all consideration of the usual factors of distance, volume, loading, value, etc. Such a structure should be applied in the light of its reciprocal nature. To attempt to equalize advantages and disadvantages in specific instances by variations in the rates tends to defeat the purpose and intent of the structure itself.

Grain and grain products.—The Board of Trade of the City of Chicago filed a separate brief in defense of the rates on grain and grain products. In general the representative of the board adhered to the position taken in the original case; that is, that there is no substantial evidence to support the finding of reasonableness with respect to the grain switching rates. He stated that while grain products present certain problems which do not arise with re-

* Zones I, II and III embrace points within 50, 51 to 100, and 101 to 150 miles from Chicago, respectively. The corresponding 1-line rates are 65, 70, and 75 cents, and the connecting-line rates are 85, 90, and 95 cents on basis of net tons. *Chicago Gravel Co.* v. *I. H. B. R. R. Co.*, 146 I. C. C. 101.

spect to the other commodities they are "in a sense bound up with * * * the other commodities," but strongly urged that the grain[4] switching rates differed materially from those affecting the rates with respect to grain products. He contends that the Lowrey or all-commodity basis was from the outset a contractual relation to which the grain interests were not a party, and that by mutual agreement the grain rates were carried as an exception to the Lowrey basis. Similarly, a number of other commodities were not included in the Lowrey agreement and were accorded a different basis of rates.

Coal.—The South Chicago Coal & Dock Company, which owns and operates docks and yards at South Chicago, receives by boat and handles approximately 150,000 tons of coal per year. There have been no movements of this coal by rail for several years because, as alleged, of the high switching costs, the coal all being delivered by trucks to consumers in the Chicago district. The cost for movement by truck was stated to range from 30 cents to $1 per ton for a maximum haul of 17 miles, including delivery to the plants of the consumers. The witness testified that per car charges of not to exceed $12, $15, and $18 for the one, two, and three-line hauls would be necessary to enable the railroads to handle this coal traffic.

Plant refuse.—It was again urged, as in the former hearings, that plant refuse of no commercial value should be accorded a lower basis than the general level of switching rates in order that manufacturers might dispose of their refuse. It appears that the length of the hauls is less than the average haul within the district and that the loading is heavier. On cross-examination it developed, however, that only intrastate movements are involved.

Other commodities.—Much additional testimony was presented with respect to other commodities, including brick; petroleum products; sulphuric acid and other chemicals; crude tar from which is manufactured paving tar, roofing tar, and creosoting oil; coke; pig iron; etc. However, much of the testimony in regard thereto related to the question of the relationship between the interstate and the intrastate rates, and it will be hereinafter discussed in connection with the section 13 feature of the report.

PRIVATE EQUIPMENT

In the prior report, at pages 704 and 705, we said:

> The shippers, however, contend that the usual allowance of 1.5 cents per car-mile for road service is inequitable in the case of switching movements, due to

[4] See discussion on pp. 692-695 of the prior report.

the detention in the latter service being entirely out of proportion to the mileage made. No testimony was presented by the carriers in that connection. Clearly, it is the duty of carriers to provide reasonably adequate and suitable equipment for all traffic which they undertake to transport, and it does not necessarily follow from the mere fact that certain shippers are furnishing their own equipment that they are to be compensated therfor. It may be, and usually is, a distinct benefit and advantage to the shipper to use his own equipment. The record does not fully disclose to what extent the use of private equipment is made necessary through failure of the carriers to maintain an adequate car supply, nor is it sufficiently comprehensive to determine what would be a fair and reasonable rental charge therefor. If the carriers and shippers should be unable to agree upon a fair charge for the use of private equipment, this feature of the case may again be brought to our attention for further hearing.

Approximately 93 per cent of the shipments made by the Standard Oil Company from their Whiting, Ind., plant to the Chicago district are in shipper-owned tank cars. The Standard Oil Company seeks reparation on all business moving interstate in their private tank cars since December 10, 1931. Their witness testified that a study made of the 1931 shipments moved into the district showed an average cost for the use of the tank cars of $5.10 per car. The record does not show the lengths of these hauls, nor the time consumed in the different movements.

The Grasselli Chemical Company, which owns and operates the American Tank Line, submitted an exhibit showing that the cost of operation per car during the year 1930 of the 710 tank cars owned by it, was $1.19 per day. They testified that the average number of days consumed in the single-line movements, both loaded and empty, was 5.7 days, for average hauls on the Indiana intrastate traffic of approximately 4 miles which, on the basis of the $1.19 cost per day results in a minimum cost of $6.78 per car. These figures, however, are based on the intrastate movements for which no allowance is made by the carriers under the existing 2-cent rate and which, the witness urged, should be retained. On their interstate two-or-more-line movements to Illinois destinations they received an allowance for the use of the tank cars of 25 miles at 1.5 cents per mile, both loaded and empty.

This was the only evidence adduced at the further hearings relating to private equipment. In *Switching at St. Louis and East St. Louis, supra*, it was pointed out that:

* * * the fact that a carrier may permit shippers to furnish their own equipment does not mean that these shippers should receive compensation, unless the carrier fails to provide the necessary equipment. Whether or not it is necessary for respondent to rent equipment for the service in question is not clear. If it is necessary, our view is that the compensation to the car owner should be made through a rental charge rather than through a differential in freight rate.

It does not appear whether any or all of this private equipment was or is being used because of shipper convenience, or through inability of the carriers to furnish the necessary tank cars. Notwithstanding our reference to these matters in the prior report the interested shippers failed to furnish the additional information at the further hearings. The record is utterly lacking in details from which a finding might be made whether reparation is due, or as to the amount thereof on any of the interstate movements in private equipment.

CHICAGO HEIGHTS, ILL.

Since 1907 the rates between Chicago Heights[5] and the Chicago switching district have been maintained on a parity with the rates applicable within the Chicago district. The switching at Chicago Heights is performed by the Chicago Heights Terminal Transfer Railroad, a switching carrier serving practically all of the industries located at that point. Because of this fact there are no 1-line movements between Chicago Heights and the Chicago district. The following table compares the average hauls and the shortest and longest hauls for 2-line and 3-line movements with similar movements within the Chicago switching district.

	2-line movements			3-line movements		
	Average	Shortest	Longest	Average	Shortest	Longest
	Miles	*Miles*	*Miles*	*Miles*	*Miles*	*Miles*
Within Chicago district	21.32	1.1	68.2	26.53	3.40	89.54
Between Chicago district and Chicago Heights	31.66	7.7	36.8	33.42	6.13	64.3

The Chicago Heights witnesses at the further hearings, as at the prior hearings, took the position that they are entitled to the same rates and should be on the same relative basis of rates as applicable within the Chicago switching district. Their shipments generally are loaded to the 60,000-pound minimum and, in many instances, much in excess of the prescribed minimum.

MINIMUM WEIGHT

While the complaint attacked the reasonableness of the 60,000-pound minimum, the witnesses, almost without exception, testified that their shipments could be loaded, and in fact in most instances were loaded, to and in excess of the 60,000-pound minimum. The paper interests, however, testified that most of their shipments moved

[5] The history of the rates applicable between Chicago Heights and the Chicago switching district is set forth on page 707 of the prior report.

to the Chicago switching district by truck because it was practically impossible for them to load a car to 60,000 pounds. Complainants compared this minimum with lower minima applicable on road-haul traffic between points in the Chicago switching district and points outside thereof, and also with a 50,000-pound minimum applicable within the Cleveland, Ohio, switching district. However, on brief they urge that "if the rates complained of herein be reduced complainants will waive the request for reduction in minimum, but if the rates are not reduced as a result of this complaint, then complainants ask earnestly for a reduction in the minimum to 50,000-pounds." As above stated, the evidence discloses that the traffic generally loads to and in excess of 60,000 pounds, and the record does not establish that the 60,000-pound minimum is unreasonable.

FINDINGS

While considerable testimony was presented at the further hearings by various concerns, including the stone, sand, and gravel interests, the grain and grain products and coal interests, and concerns shipping primarily in tank cars, directed toward a showing that such commodities were entitled to rates lower than the present interstate all-commodity basis, the record does not disclose that the existing rates for the movements involved are unreasonably high for these or any other commodities which are moving on the all-commodity basis. Switching throughout the country generally is performed on an all-commodity or per car basis, and because of the nature of the movements, the manner of handling, and the volume of the tonnage involved, the switching traffic is peculiarly adapted to an all-commodity basis of rates.

We find that the assailed interstate switching rate of 3 cents per 100 pounds for 1-line hauls, 3.5 cents for 2-line hauls, and 4 cents for 3-or-more-line hauls, and the carload minimum weight of 60,000 pounds, applicable within the Chicago switching district and between the district and Chicago Heights, Ill., are not unjust or unreasonable. The complaint accordingly will be dismissed.

SECTION 13 INVESTIGATION

Within the Chicago switching district are located more than 5,000 industries with private sidetracks, and in addition numerous small manufacturers and distributors whose plants are not equipped with private sidetracks. The district is honeycombed with a network of tracks and sidings over which the switching under consideration is performed. These proceedings embrace all of the 69 commodity groupings into which the traffic has been classified. In each of the

groups are involved both interstate and intrastate movements. As previously stated, the interstate rates apply on an all-commodity basis, the same rate and minimum weight applying to each commodity, depending, of course, on the number of lines involved in the movements, but irrespective of differences in the length of haul. Much of the intrastate traffic also moves on the so-called Lowrey basis. The shippers and receivers of freight within the district generally declared that the basis of rates should be the same throughout the district for interstate and intrastate movements, some contending, however, that the level should not exceed the present intrastate rates, while others urged that the same level be maintained provided the all-commodity basis would not exceed 2.5, 3, and 3.5 cents for the one, two, and three-or-more line movements respectively. The evidence discloses that the traffic, both interstate and intrastate, is handled in the same trains, by the same train crews, and in the same manner. The district is divided by the Indiana-Illinois State line. On each side of this line are located industries which ship and receive commodities of the same general nature. It appears that since December 10, 1931, the effective date of the increased interstate rates, many of the shippers within the district have been routing their traffic over intrastate routes whenever such routes are available in order to secure the benefit of the lower Lowrey rates of 2.5, 2.5, and 3 cents for one, two, and three-or-more line hauls, respectively, minimum 60,000 pounds. There are, however, exceptions to that basis, both over and under the Lowrey rates, and different minima apply. To all of these intrastate rates, there has been added the emergency 10 per cent increase effective January 11, 1932, following our decision in Ex parte 103, *Fifteen Per Cent Case, 1931*, 178 I. C. C. 539; 179 I. C. C. 215; 191 I. C. C. 361. The minimum per car charges on the commodities moving on the Lowrey basis, therefore, have been increased from $15 to $16.50 for the 1-line and 2-line movements, and from $18 to $19.80 per car for the 3-or-more-line movements, with proportionate increases on commodities not moving on the Lowrey basis. The Ex parte 103 increases, however, were not permitted to be added to the higher interstate switching rates which became effective December 10, 1931.

The representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana stated that, inasmuch as only the commodities moving on the Lowrey basis of rates were before those commissions for determination under their suspension proceedings,[6] which were heard with the original proceeding in no. 19610, insofar as the exceptions to the Lowrey basis are con-

[6] No general investigation was instituted either by the Illinois or the Indiana State commissions at the time of the prior hearings.

cerned (other than the 10 per cent emergency increase), the carriers have made no effort to obtain approval of the State commissions for any changes in those rates, and that no petition for reconsideration or rehearing was submitted by the carriers to either of the State commissions with respect to the commodities moving on the Lowrey basis of rates. Furthermore, the witness for the grain interests stressed the fact that the bulk of grain switched within the Chicago district is between elevators located within the State of Illinois at rates not on the Lowrey basis, and that because the great preponderance of the switching movement is intrastate, and the State commissions not having had an opportunity to pass upon the reasonableness of the intrastate grain switching rates, this commission should not invade the domain of the State authorities, particularly with respect to this traffic. Paragraph 3 of section 13 of the act provides that:

> Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, *made or imposed by authority of any state* * * *, the commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding.

The Illinois and Indiana State commissions refused to permit the so-called Lowrey basis of rates to be increased within their respective States to the basis of the interstate all-commodity rates, which action might be considered to be indicative of what the State commissions would do with respect to the exceptions to those rates if and when brought before them for consideration. Furthermore, if an intrastate rate voluntarily proposed by a carrier is allowed to be filed by a State commission, it is established under the laws of the State, and for this reason alone it is a rate made, though not imposed, by the authority of the State and comes within the words "made or imposed by authority of any State." *Florida* v. *United States*, 282 U. S. 194.

As previously indicated, one of the principal criticisms of the representatives of the Illinois and Indiana State commissions is that the traffic included in the study was not representative. In support of that statement they direct attention to the omission of the Chicago Junction Railway Company, hereinafter called the Chicago Junction, from the study, although in the month of September, 1926, that carrier handled 1,764 cars in 1-line hauls as contrasted with a less number of 1-line hauls on certain study roads. The Chicago Junction was not included in the cost study due to the volume of 1-line short-haul undiversified traffic handled between packing houses on its line. Its movements range from 200 feet to a mile. It is obvious

that those movements are not representative of the intradistrict hauls performed within the district.[7]

In the prior report it was pointed out that "the shippers generally favor an all-commodity basis but most of them are opposed to any increases in their present rates." At the further hearings while still quite generally favoring an all-commodity basis, the shippers were practically unanimous that the basis should be no higher than the rates which were in effect prior to the December 10 increases, or the same as the effective intrastate rates. The representative of the Board of Trade of the city of Chicago, whose members deal in grain and grain products, took the position that the grain shippers did not contend for, nor agree to be included in, the all-commodity basis; that practically the entire movement of grain and the great preponderance of the movement of grain products within the switching district is intrastate, and that therefore interstate commerce is not discriminated against by the lower rates on intrastate movements of grain. Furthermore, the representatives of the various stone producers operating crushed-stone plants within the switching district also urge that, regardless of what rates might be found reasonable for the movement of other commodities, "the substantial difference in conditions surrounding the movement of stone, sand and gravel fully justifies such commodities being excepted and accorded a lower rate than might be properly applied on other commodities." This is contrary to the position taken by the same witness at the former hearings.

It was shown by witnesses for respondents that some of the railroads operating within the switching district, especially the strictly switching carriers which operate exclusively within the district, cannot move traffic from an industry located on the Indiana side of the line to an Indiana destination without operating in the State of Illinois, and likewise cannot move traffic from an industry located in Illinois going to a destination in Illinois within the district without operating in the State of Indiana. The Indiana Harbor Belt Railroad, for example, has industries located on its line served by it exclusively which are located on both sides of the Illinois-Indiana State line, and some of the assembly yards and interchange tracks overlap the State line. Respondents' witnesses testified with respect to certain industries dealing in iron and steel, animal feed and fertilizer, corn products, petroleum products, etc., whose hauls are interstate and which compete with industries located in Illinois and

[7] At page 697 of the prior report it was stated: "In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they cannot be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

Indiana manufacturing the same commodities, the latter being able to ship on the lower intrastate basis of rates. As above stated, the testimony indicates that a uniform basis of rates, both interstate and intrastate, within the Chicago switching district is desirable, that the traffic is handled in the same trains, and in a general way, that competitive conditions exist within the district, but no interstate shipper presented any testimony of any specific instances of competition with intrastate shippers at the lower intrastate rates. In other words, no showing was made that any interstate shipper was injured because his rates were higher than those contemporaneously applicable on the traffic of shippers in intrastate commerce, or that his business has been materially lessened by reason of the disparity of the rates. In fact, the record in no. 19610 is devoid of any shipper testimony of competition between interstate and intrastate traffic, notwithstanding the fact that during the hearings the attention of counsel for the shippers was called to the wording of the order of investigation in this connection. But the record strongly suggests that the failure of any interstate shippers or manufacturers to testify in the proceeding may be accounted for in large part by the fact that most of them, having intrastate routes available, now have the benefit of the lower intrastate rates, and in part was actuated by the hope and belief that their failure to present the necessary specific evidence of competition with intrastate traffic and shippers would ultimately result in the restoration of the prior existing rates for interstate movements. Counsel for the shippers on brief stated:

> No great amount of evidence on behalf of shippers was presented in this case. The carriers are seeking an order from the Interstate Commerce Commission requiring increases in state rates. *No shipper appeared to support the alleged claim of discrimination and prejudice against interstate and preference of intrastate traffic.* The shippers who did appear sought to defend the present state rates.

Witnesses for the carriers further testified that many of the industries cannot ship to points within the district except over interstate routes and therefore must pay the interstate rates of 3, 3.5, and 4 cents for one, two, and three-or-more-line hauls, respectively, while the industries which have intrastate routes available may ship on the basis of 2.5 cents for 1-line and 2-line hauls, and 3 cents for 3-or-more-line hauls, in carloads minimum 60,000 pounds, and in some instances at lower rates, but usually with higher minima, because of the exceptions under the Lowrey rates applicable on intrastate traffic. One of respondents' exhibits shows the so-called natural or interstate, and the unnatural or intrastate routes. The witness stated that in order to develop economy and efficiency of service certain routes have been designated for the movement of certain types

of traffic, and explained that the term "unnatural route", via which many industries have been routing their shipments since the December 10 increases, instead of permitting them to move via the natural interstate routes, was used because such movements take the cars against the flow of the traffic. In other words, movement over the intrastate routes in most instances requires special handling by the motive power because it is either partially or wholly in the opposite direction to the usual trend of the district traffic, which is governed by the preponderance of the traffic moving into or out of the district in connection with line hauls. This exhibit shows that during the period December 10, 1931, to March 31, 1932, 856 cars were specifically routed and moved over the lower rated intrastate routes which formerly would have moved over interstate routes, for which the respondents show an alleged loss in revenue of $7,656. The record discloses that in some instances these unnatural or intrastate routes are not only shorter but involve less service. On cross-examination it developed that a considerable haul, in several instances amounting to approximately 20 miles, in connection with the so-called natural or interstate routes, could be saved by the use of more advantageously located interchange connections. A number of such movements were pointed out, and in those cases what was the natural haul over an interstate route would become the shorter haul via an intrastate route, and would involve the most economical movement. The extent of the round-about or circuitous hauls in connection with some of the so-called natural routes is disclosed in two of the illustrations shown on the exhibit where the natural or interstate routes involved hauls of 38 and 45 miles, as compared with the unnatural of intrastate hauls of only 13 and 23 miles, respectively. In this connection attention is called to the statement made in the prior report where, at page 692, it is stated:

> The record leaves no doubt that there is need for improvement in the handling of this vast switching business, and we cannot too strongly urge upon the carriers the necessity for prompt study of these conditions looking toward the elimination of unnecessarily circuitous hauls, the proper location of interchange points and classification yards, etc.

While the record indicates that some consideration was given to this feature, the carriers apparently have made little effort to comply with these suggestions, and there is opportunity for further study and much improvement along this line. Prompt steps should be taken to effect these economies in the handling of this vast traffic throughout the district.

Exhibits submitted by the carriers indicate that since the interstate rates were increased on December 10, the percentage of intrastate movements within the district and between the district

and Chicago Heights has increased. The table below compiled from these exhibits shows the ratios, in percentages, of the interstate and intrastate traffic for the week of November 9 to 15, 1931, prior to the effective date of the increases, as compared with the week January 11 to 17, 1932, which was subsequent to the time the interstate increases became effective:

Chicago switching district traffic	Illinois intrastate		Indiana intrastate		Total intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
One-line hauls	18.07	13.43	16.15	17.81	34.22	31.24	65.78	68.76
Two-line hauls	44.10	49.08	0.70	1.89	44.80	50.97	55.20	49.03
Three-line hauls	63.85	82.15	...	...	63.85	82.15	36.15	17.85
Composite one, two, and three line hauls	35.39	38.63	7.08	8.12	42.47	46.75	57.53	53.25

Traffic between Chicago and Chicago Heights	Intrastate		Interstate	
	Nov. 1931	Jan. 1932	Nov. 1931	Jan. 1932
Two-line hauls	26.30	33.39	73.70	66.61
Three-line hauls	52.67	85.29	47.33	14.71
Four-line hauls	100.00	100.00	...	...
Composite two, three, and four line hauls	52.93	71.38	47.07	28.62

As contrasted with the above figures it appears from the table on page 679 of the original report that the interstate traffic within the district was 40.29 per cent of the entire movement in September, 1926, the Illinois intrastate movement being 53.31 per cent and the Indiana intrastate 6.40 per cent. The representatives of the Indiana commission took the position that inasmuch as only a comparatively small percentage of the switching traffic moves intrastate within Indiana there is no justification for increasing the rates on that traffic; furthermore, that while 15 carriers were included in the cost study, only 4 of them[8] operate within Indiana, and that separate costs of those 4 carriers were not shown in the cost study. For the same months in 1926 only 24.29 per cent of the tonnage moved interstate between the Chicago switching district and Chicago Heights and 75.71 per cent moved intrastate within Illinois.

The intrastate movements within Indiana, because of the physical layout and the relatively short hauls, it is contended, are not comparable as to cost of transportation, value of service, etc., with the movements within the district as a whole. The intrastate hauls within Illinois are longer than the hauls within Indiana, and the average length of the 1-line hauls within Illinois approximates the

[8] The Pennsylvania Railroad, Elgin, Joliet & Eastern Railway, Baltimore & Ohio Chicago Terminal Railroad, and Indiana Harbor Belt Railroad.

average 1-line interstate hauls, although the average hauls for 2-line and 3-line interstate movements exceed the average intrastate hauls, as appears from the following table which shows the relative lengths of the hauls of the interstate and intrastate "cost-study" cars moving within the Chicago switching district:

Average hauls	Illinois *Miles*	Intrastate, Indiana *Miles*	Interstate *Miles*
One line	14.7	6.3	15.0
Two lines	15.9	7.3	27.5
Three lines	23.4	..	34.2

In view of this showing of differences in the average lengths of the hauls as between interstate and intrastate movements the representatives of the Illinois and Indiana State commissions contend that the average costs of all traffic are not representative of the costs of the intrastate traffic and that it, therefore, cannot be said that the lower rates on the intrastate traffic for the shorter distances discriminate against the interstate traffic. Switching charges differ from line-haul rates in that they are ordinarily not graded in accordance with either the value of the commodity moved or the distance of movement. As a rule they apply to any haul within the switching district no matter how long or how short it may be, subject to the qualification that a haul to or from a connecting line may take a lower charge than a haul complete in itself. *Boston Wool Trade Asso.* v. *Director General*, 69 I. C. C. 282, 294. Switching charges are largely based on average conditions. In every switching district there will almost invariably be found some hauls so long and so difficult that the cost is in excess of the switching charge collected, but that fact does not show the charge to be less than reasonable, for the question is whether the carrier is receiving adequate compensation for the total switching service rendered within the district. *Rochester Switching Case*, 95 I. C. C. 30, 45. And in *Switching at St. Louis and East St. Louis*, *supra*, we said:

> One of the protestants contends that there should be graded rates on these commodities based on distance. But distance is not necessarily a controlling factor in switching costs. The time consumed in rendering the service is more important. In this connection it may be observed that respondent's cost study indicates that the cost of switching cars from Ewing Avenue to one of the protestant's nearest places of business is greater than to its farther-distant location. Moreover, for various practical reasons, it is desirable that switching rates be on somewhat of a postage-stamp basis.

Furthermore the intrastate hauls within the district range from a fraction of a mile to 54 miles, and there are interstate hauls also which range from a fraction of a mile to 68 miles, with one haul

shown of approximately 89 miles. It thus follows that there are many individual intrastate hauls which are longer than many of the interstate hauls. From the outset, as previously stated, the interested parties, with few exceptions, favored an all-commodity basis, and practically all parties were of one accord that one level of rates should apply throughout the district on both interstate and intrastate movements, but coupled generally with the proviso that the level of the rates should not exceed the intrastate basis. The very nature of such rates applying, as they do, within this homogeneous industrial district and, with minor exceptions, on an all-commodity basis, involves, to a large extent, disregard for distance.

The carriers show a constructive annual loss in revenue resulting from the lower intrastate rates required to be maintained under the orders of the Illinois and Indiana State commissions. This loss is measured by the difference between the revenue which would have accrued on the intrastate traffic of September 1926 under interstate rates as increased December 10, 1931, and the prevailing intrastate rates. The traffic moving in September 1926 is used as representative because it was the basis for the cost data presented in the original case. The estimated annual difference in revenue within Illinois amounts to $2,683,981, within Indiana $94,244, and between the Chicago switching district and Chicago Heights $86,732, a total of $2,864,957, which the carriers contend is the amount by which interstate commerce would be unduly burdened under normal business conditions. Studies also were made of the difference in revenue between the interstate and intrastate rates based on the traffic moving during the weeks of November 9 to 15, 1931, and January 11 to 17, 1932. These two weeks represent periods prior and subsequent to the December 10, 1931, interstate increases. Based on the intrastate switching traffic moving within the district for the week of November 9 to 15 there is shown a difference in revenue of $11,731 per week, or an estimated annual loss of $1,011,369; on the basis of the traffic for January 11 to 17 the difference would amount to $9,556 per week, or an estimated annual loss of $985,181. Based on the traffic which moved intrastate between the district and Chicago Heights for the week of November 9 to 15 the difference in revenue would amount to $535, or an estimated annual loss of $46,152; and for the period January 11 to 17 there is shown a loss of $562, or a net annual loss of $57,979. These constructive differences amount annually to $1,057,521 based on the traffic handled during the week of November 9 to 15, and to $1,043,160 based on the traffic moving during the period January 11 to 17.

The respondents relied in large part upon such showing of the difference in revenue under the present intrastate 1-line, 2-line, and

3-line rates as compared with the revenue that would accrue to them under the basis of rates found reasonable for interstate traffic. In arriving at the above figures respondents assumed that all the intrastate traffic would have continued to move by rail at the higher rates. This is not a fair assumption. There has been a considerable decrease in tonnage since September 1926. While the major part of that decline undoubtedly is chargeable to the general business depression, in part it is due to the diversion of traffic to motor trucks. Within the Chicago switching district there are many improved highways and also certain navigable waterways which handle a substantial volume of tonnage that otherwise would move by rail. The witnesses for certain industries testified that any increases in the present intrastate rates on their commodities, which included pig iron, paving and roofing tar, sulphuric acid and other chemicals, crushed stone, and others, would divert the tonnage to motor trucks, pipe lines, or barges. However, having in mind that the average single-line intrastate haul in Illinois is nearly 15 miles and in Indiana 6.3 miles; that highway traffic conditions in the Chicago district are congested, involving material delays in the movements of trucks; that the differences between the intrastate and interstate rates at present are generally for single-line hauls only $1.50, and $3 after expiration of the emergency increases; and also that a very large proportion of the intrastate traffic is handled in 1-line movements, we are not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto.

In *Florida* v. *United States*, *supra*, the Supreme Court, at pages 211 and 214, said:

> In construing the statute this court has held that the general provision of section 13(4) prohibiting "unjust discrimination against interstate commerce" and authorizing the commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 * * *. The authority granted by section 13(4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.
>
> As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic shall pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. * * * In considering the authority of the commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income.

The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage. * * *

The commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

FINDINGS

While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.

We further find that the transportation conditions throughout the Chicago switching district are substantially similar; that they are not more favorable for intrastate movements than for interstate movements between the switching district and Chicago Heights; that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana between points within the Chicago switching district for 1-line, 2-line, and 3-or-more-line movements, and between that district and Chicago Heights on a lower basis than the corresponding all-commodity rates and minimum weights for 1-line, 2-line, and 3-or-more-line movements, found not unreasonable and approved for interstate transportation in switching service, has not been shown to have caused or to cause any undue preference and advantage of persons or localities in intrastate commerce, or any undue prejudice and disadvantage to persons or localities in interstate commerce, but that the maintenance of such lower intrastate rates results, and will for the future result in unjust discrimination against interstate commerce.

While the above findings include Chicago Heights, we will not enter a section 13 order with respect to the relation of the interstate and intrastate rates and charges on traffic moved between the Chicago switching district and Chicago Heights, for the reason that the motion filed by respondents only sought appropriate findings and order "authorizing, requiring and directing the railroads to publish contemporaneously with the publication of the rates on interstate traffic the same rates on intrastate traffic in the States of Illinois and Indiana *within the Chicago switching district.*" (Italics supplied.)

The order issued thereupon accordingly reopened only Docket No. 19610, which was an investigation into the lawfulness of the rates and charges for switching within the Chicago switching district, the Chicago Heights feature in the prior report having been covered by the suspension proceeding in I. and S. Docket No. 2900. At the further hearings the examiners called attention to the fact that technically there was no section 13 issue for determination with respect to the Chicago Heights-Chicago district rates, but that no objection had been interposed to the submission of the Chicago Heights exhibits or to the testimony offered in regard thereto, and that the Chicago Heights interests at the prior hearing desired to stand or fall with the rates which would be prescribed within the district. Thereupon the representative for the Chicago Heights interests specifically stated that they still maintained the same position, and the representatives of the Illinois commission interposed no objection. It is apparent, therefore, that it was generally understood that the Chicago Heights section 13 matter was thus brought in issue, but because it was not included in the order reopening the proceedings for further hearing we will not enter a specific order therein. Attention, however, is again directed to the following statement appearing at page 710 of the prior report:

> Considering all the facts of record it is evident that the present rates are too low and that rates somewhat in excess of the corresponding 2-line and 3-or-more-line rates within the district will not be unreasonable for application between Chicago Heights and the Chicago switching district. But inasmuch as there is no proposal on the part of the respondents serving Chicago Heights to establish any higher rates than apply within the district, and no showing on the part of shippers within the district that the maintenance of district rates to and from Chicago Heights will result in undue prejudice to them and undue preference of Chicago Heights, we will make no finding herein which would require higher rates between Chicago Heights and the Chicago switching district.

Appropriate orders will be entered.

FARRELL, *Chairman*, dissenting in part:

I dissent from the majority's conclusion that unjust discrimination against interstate commerce results from the fact that the Indiana and Illinois intrastate switching rates involved are somewhat lower than the interstate switching rates covered by the majority report, because, in my opinion, these disparities in rates, as shown by statements of fact included in the report, are justified by differences in the transportation services, performed by the carriers, to which the rates are applied.

I am authorized to state that COMMISSIONER AITCHISON joins in this expression.

U. S. Government Printing Office: 1933

ORDERS.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3rd day of July, A. D. 1933.

No. 19610.

Switching Rates in the Chicago Switching District.

This case being a proceeding instituted by the Commission upon motion filed by various common carriers operating in the States of Illinois and Indiana within the Chicago switching district, and having been duly heard and submitted by the parties and full investigation having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

And it appearing, That the respondent carriers parties hereto having published all-commodity 1-line, 2-line and 3-or-more-line switching rates and minimum weights for application to interstate transportation in switching service in the Chicago switching district which comply with the Commission's findings in the prior report in Docket No. 19610, *Switching Rates in Chicago District*, 177 I. C. C. 669, but continue to publish for intrastate application to similar traffic in 1-line, 2-line, and 3-or-more-line movements in the Chicago switching district within the States of Illinois and Indiana switching rates and minimum weights which are upon a substantially lower basis:

It is ordered, That respondents herein, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist on or before September 20, 1933, from practicing the unjust discrimination found in said report to exist in relation of interstate and

intrastate all-commodity switching rates and charges for transportation in switching service in the Chicago switching district within the States of Illinois and Indiana.

It is further ordered, That said respondents according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before September 20, 1933, and thereafter to maintain switching rates and charges on an all-commodity basis for switching service in intrastate commerce in the Chicago switching district within the States of Illinois and Indiana which shall be not less than the rates contemporaneously applied by said carriers to the transportation by them of all commodities in interstate switching service between points in the Chicago switching district in the States of Illinois and Indiana.

And it is further ordered, That this order shall remain in force until the further order of this Commission.

No. 24950

Acme Steel Company et al.

v.

Atchison, Topeka & Santa Fe Railway Company et al.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

(Seal.)

GEORGE B. MCGINTY,
Secretary.

APPENDIX D.

BEFORE THE

Interstate Commerce Commission

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT. } Docket No. 19610.

PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, ACME STEEL COMPANY, ET AL., (COMPLAINANTS IN DOCKET 24950), BOARD OF TRADE OF THE CITY OF CHICAGO, INTERVENERS HEREIN, FOR REOPENING FOR FURTHER HEARING, FOR SETTING ASIDE OF ORDER OF JULY 3, 1933, FOR REARGUMENT AND/OR RECONSIDERATION.

ILLINOIS COMMERCE COMMISSION,
B. F. LINDHEIMER, Chairman,
CHARLES E. BYRNE,
ANDREW OLSON,
ERNEST J. KRUETGEN,
Commissioners.
By IRVIN ROOKS,
Its Attorney.

PUBLIC SERVICE COMMISSION OF INDIANA,
PERRY McCART, Chairman,
MOIE COOK,
S. L. TRABUE,
Commissioners, Public Service Commission of Indiana.
PHILIP LUTZ, Jr.,
Attorney General of Indiana.
By G. W. HUFSMITH,
Assistant Attorney General of the State of Indiana,
Attorneys for Public Service Commission of Indiana.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HERBERT J. CAMPBELL,
Its Attorney.

ACME STEEL COMPANY, et al.,
(Complainants, Docket 24950),
By LUTHER M. WALTER,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
Its Attorneys.

WALTER, BURCHMORE & BELNAP,
Of Counsel.

August 15, 1933.

BARNARD & MILLER PRINT, CHICAGO

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In order to find that a disparity in rates on intrastate traffic and on interstate traffic constitutes unjust discrimination, the record must disclose facts showing, and the Commission must find (a) that the intrastate traffic and the interstate traffic must be of a like kind; (b) that the service rendered on intrastate traffic and on interstate traffic is of a like and contemporaneous character, performed under substantially similar circumstances and conditions, (c) and the disparity between the level of interstate rates and intrastate rates must be so substantial as to operate as a real discrimination against and as an obstacle to interstate commerce	42
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BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT. } Docket No. 19610.

PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, ACME STEEL COMPANY, ET AL., (COMPLAINANTS IN DOCKET 24950), BOARD OF TRADE OF THE CITY OF CHICAGO, INTERVENERS HEREIN, FOR REOPENING FOR FURTHER HEARING, FOR SETTING ASIDE OF ORDER OF JULY 3, 1933, FOR REARGUMENT AND/OR RECONSIDERATION.

Now come Illinois Commerce Commission, Public Service Commission of Indiana, other parties hereto, more particularly described as complainants in Docket 24950, Acme Steel Company, *et al.*, and Board of Trade of the City of Chicago, and present this their petition for reopening of these proceedings for further hearing, for setting aside of the order of July 3, 1933, for reargument, and/or reconsideration of the report and order made herein, and in support of said petition show as follows:

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I.

1. The order is void because there is no evidence in support thereof.

2. The order is void because no proper findings in support thereof have been made by the Commission.

3. The Commission erred in its decision and order of July 3, 1933, in finding:

(a) That the maintenance of lower intrastate rates by the respondents in the Chicago switching district than are contemporaneously effective on interstate commerce in the Chicago switching district results and will for the future result in unjust discrimination against interstate commerce. (Sheet 45.) [195 I. C. C. 118.]

(b) That the record is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis. (Sheet 45.) [195 I. C. C. 118.]

(c) That no substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied to intrastate traffic. (Sheet 44.) [195 I. C. C. 117.]

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II.

The Commission erred in failing to find:

1. The service performed in intrastate switching in the Chicago switching district on Illinois intrastate traffic is substantially less than that performed on interstate traffic.

2. The service performed in intrastate switching in the Chicago switching district on Indiana intrastate traffic is substantially less than that performed on interstate traffic.

3. The disparities between the intrastate switching rates and the interstate switching rates are justified by differences in the transportation services performed by the carriers publishing the rates.

4. The intrastate rates charged for switching service on Illinois intrastate traffic are not less than just and reasonable rates.

5. The intrastate rates charged for switching service on Indiana intrastate traffic are not less than just and reasonable rates.

6. While interstate rates now in effect were found not unreasonable by this Commission on a record closed in 1928, that finding was predicated largely on a cost study ascertained as to certain traffic moving during certain periods in 1927 over certain railroads applied on certain traffic moving in September, 1926; the record

herein fails to show that in view of changed conditions those rates are now not in excess of just and reasonable rates and in excess of what the traffic will bear.

7. The interstate rates prescribed by this Commission for application on switching traffic in Chicago switching district are so high that a large proportion of the switching traffic has been diverted from the rails of the respondents to competing forms of transportation such as plant facilities, trucks, waterways and pipe lines.

8. Many shippers of important commodities moving in large volume have deferred the expenditure of funds necessary to avail themselves of plant facilities and transportation by truck, by water, or by pipe line, pending the determination of the future level of switching rates, both interstate and intrastate; if the future level of switching rates, both intrastate and interstate, is to be upon the present interstate level of rates such shippers will expend the money necessary to utilize plant facilities and truck, water and/or pipe line transportation,

thereby still further increasing the tonnage diverted from rail transportation to competing forms of transportation.

9. Many of the respondents in this proceeding perform no 1-line service in hauling interstate traffic and the maintenance of 1-line intrastate rates lower than those prescribed or found not unreasonable by this Commission for interstate transportation does not unjustly discriminate against interstate commerce of such carriers

inasmuch as there is no 1-line interstate commerce on the rails of such respondents. None of the following respondents apply any 1-line interstate switching rates or perform any 1-line switching service in interstate commerce over their own rails in the Chicago Switching district:

The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Railroad Company,
The Belt Railway Company of Chicago,
The Chesapeake and Ohio Railway Company,
Chicago and Calumet River Railroad Company,
Chicago and Eastern Illinois Railway Company,
Chicago & Illinois Western Railroad,
Chicago and North Western Railway Company,
Chicago and Western Indiana Railroad Company,
Chicago, Aurora and Elgin Railroad Company,
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway,
Chicago, Milwaukee, St. Paul & Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago Short Line Railway Company,

Chicago, West Pullman & Southern Railroad Company,
Illinois Central Railroad Company,
Illinois Northern Railway,
Manufacturers' Junction Railway Company,

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Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
Pere Marquette Railway Company,
Pullman Railroad Company,
Wabash Railway Company.

The following lines operate 1-line switching haul service, interstate, and apply 1-line interstate rates therefor, in the Chicago switching district:

The Baltimore and Ohio Chicago Terminal Railroad Company,
Chicago and Erie Railroad Company,
Indiana Harbor Belt Railroad Company,
The Michigan Central Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company.

While some of the respondents named in the first paragraph hereof have rails extending across the state line between Illinois and Indiana they do not, with their own power, switch any traffic in 1-line haul between industries in Illinois and industries in Indiana in interstate service, that service being performed by a subsidiary company, owned either wholly or in part, by an affiliated company, or by a lessee company, all of which companies are named in the second paragraph herein and such companies either perform a 1-line interstate haul as set forth in the second paragraph hereof, or as part of a 2-line interstate haul made up of the lines of the carriers in paragraph 1 and paragraph 2 hereof.

10. The record discloses that there is a large number of commodities moving 1-line intrastate in Illinois and 1-line intrastate in Indiana that are not shown to be moving 1-line interstate in the Chicago switching district over the lines of respondents.

11. The record discloses that there are a number of commodites moving over the lines of the respondents, either intrastate in Indiana and/or intrastate in Illinois, which are not shown to be moving interstate in the Chicago switching district.

12. The record does not disclose the revenue which each of the respondents has derived or which could reasonably be expected to be derived on intrastate traffic in Illinois, separately stated as to 1-line, 2-line and 3-or-more-line hauls, either under the present rates or under the rates which were found not unreasonable by this Commission for application on interstate traffic.

13. The record does not disclose the revenue which each of the respondents has derived or which could reasonably be expected to be derived on intrastate traffic in Indiana, separately stated as to 1-line, 2-line and 3-or-more-line hauls, either under the present rates or under the rates which were found not unreasonable by this Commission for application on interstate traffic.

14. The record shows that to increase the intrastate rates of the respondents to the level prescribed for interstate rates in the Chicago switching district will reduce

the volume of business handled and the revenue derived therefrom below the amount now received for the transportation of intrastate traffic on the rates now in effect.

15. The revenues of the respondents on switching

traffic intrastate are ample to maintain an adequate transportation service by each and all of the respondents and cast no undue burden upon the interstate revenues of any or all of the respondents.

16. The cost studies presented by the respondents are based on arbitrary assumptions involving the use of unweighted averages, are of carriers not representative of the entire switching district, are of alleged costs of a few of the carriers for periods of time entirely too limited in scope and not representative of the years' business over a period of time sufficient to reflect the average annual cost of switching service; were made six years ago, were applied against traffic moving seven years ago, and therefore are so remote as to be wholly improper as a basis for finding present costs, and are otherwise so defective as to constitute no proper basis for a finding as to reasonableness or unreasonableness of rates now in effect, in effect prior to December 10, 1931, and proposed to be made effective September 20, 1933, on interstate traffic and on intrastate traffic.

17. The cost studies presented in evidence by the respondents, with all their defects, and giving full effect to all modifications suggested by shippers, state com-

missions and carriers, tend to show that rates now in effect on intrastate traffic for 1-line, 2-line and 3-or-more-line hauls, contribute their fair proportionate share of the revenues of each of the respondents.

18. There is no evidence in the record upon which this Commission can find that the present intrastate rates fail to produce their fair proportionate share of revenues which the commodities transported under such rates should yield to each of the respondents.

19. There is no evidence in the record upon which the Commission can find that intrastate rates now in effect in Indiana and in Illinois constitute an unjust discrimination against interstate commerce.

20. There is no evidence in the record upon which this Commission can find that the respondents will have a greater income if the intrastate rates be increased to the level of the interstate rates.

21. Inasmuch as the record shows that the maintenance of intrastate switching rates within the Chicago switching district for 1-line, 2-line and 3-or-more-line movements, on a lower basis than the corresponding all-comodity rates for 1-line, 2-line and 3-or-more-line movements in interstate switching service, has not caused, nor will cause, any undue preference and advantage to persons or localities in intrastate commerce or any undue prejudice and disadvantage to persons or localities in interstate commerce, it necessarily follows that no unjust

discrimination results or will result against the interstate traffic of such persons or such localities.

22. The term "unjust discrimination" has been a part of the Interstate Commerce Act in Section 2, since 1887; when Congress used the same term in Section 13, paragraph 4, brought into the Act by Transportation Act, 1920, it intended that the phrase should have the same definition and interpretation as had theretofore been made in and under Section 2.

The facts necessary to constitute unjust discrimination against interstate commerce must disclose that the service rendered on intrastate traffic and interstate traffic is of a like and contemporaneous character, performed under substantially similar circumstances and conditions;

the intrastate traffic and interstate traffic must be of a like kind; the law does not require that intrastate rates shall be maintained at the exact level of interstate rates, and the disparity between the level of interstate rates and intrastate rates must be so substantial as to operate as a real discrimination against an obstruction to interstate commerce.

Much of the traffic transported intrastate in Indiana and intrastate in Illinois is not of a like kind to that transported interstate between the two states; since 1-line intrastate traffic in Illinois and in Indiana is performed in the main by carriers which have no 1-line interstate traffic in the Chicago switching district, the circumstances and conditions surrounding the movement in 1-line haul

are not and can not be similar to the circumstances and conditions surrounding the movement of 1-line interstate traffic; the service rendered on intrastate traffic in Indiana and on intrastate traffic in Illinois is substantially less than that performed on interstate traffic between Indiana and Illinois, and therefore it is not a like and contemporaneous service.

For these reasons it follows upon the particular facts of record herein that no unjust discrimination within the meaning of the Act has been shown against interstate commerce by reason of the maintenance of the present relationship in rates intrastate and interstate in the Chicago switching district.

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III.

The Commission should reopen these proceedings, should vacate its order of July 3, 1933, and should set the case for further hearing for the following reasons:

1. Conditions have substantially changed since testimony was submitted in this case and the record closed on May 10, 1932. The competition between the rail respondents and those engaged in transportation by truck, by water and/or by pipe line has greatly increased. Trucking costs are less, and the highways have been still further improved so as to permit an increase in the volume of tonnage diverted from rail to truck, water or pipe line facilities. Shippers who moved all their traffic by rail prior to May 10, 1932, are now moving a substantial portion of their business by plant facilities, by truck, by water, or by pipe line; those shippers who used truck, water or pipe line prior to May 10, 1932, are now giving a greater portion of their traffic to the truck, the water carrier and the pipe line.

2. Petitioners upon further hearing will show to this Commission that the respondents engaged in line-haul traffic of commodities of a like kind to those transported wholly within the Chicago switching district intrastate in Indiana and intrastate in Illinois, receive out of published interstate rates as compensation for hauls of such line-haul traffic to and from industries in the Chicago switching district, amounts much less than are received

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for intrastate switching in Indiana and intrastate switching in Illinois although the line-haul service that is rendered on the interstate traffic to and from Chicago, originating outside of or destined to points outside of the

Chicago switching district greatly exceeds the service performed on intrastate switching. For example, the division of revenue on coal and on many other commodities moving from points outside of Illinois to Chicago is not greater than, and in many cases is less than, the rates applicable on intrastate switching traffic in Illinois and in Indiana. Measured by the compensation received for the service rendered on such interstate traffic, any unjust discrimination which may exist is against intrastate commerce and any needed revenue of the respondents should be made up by increasing line-haul rates on interstate commerce and not by attempting to still further increase intrastate switching charges.

IV.

The order of the Commission of July 3, 1933, should be made definite and precise in the following respects:

1. Some of the respondents take the position that each respondent is required to increase its intrastate 1-line haul rate in Indiana and/or Illinois only to the level of the 1-line interstate rate now published by the particular individual respondent and inasmuch as many of the carriers now publish no interstate 1-line rate, and have no possible 1-line interstate haul, there is no re-

quirement or authority for the increase of the 1-line intrastate rate of such carrier.

In order to make clear what the Commission's order requires in such case the order of the Commission should be set aside and the case reopened with a view to further consideration after oral argument, to the end that the order of the Commission be made precise and definite as to just what rates, if any, should be increased.

2. As a further reason why the case should be reopened and assigned for further hearing and/or oral argument, and/or reconsideration on the record as made, we point to the various errors as above set forth, to the end that the Commission may give full consideration to all of the questions which may be justiciable in any court of competent jurisdiction.

Attached hereto is a brief in support of this petition, which is made a part hereof as fully as though embraced herein.

WHEREFORE petitioners respectfully pray that this Commission will, by appropriate order, reopen these proceedings for further hearing, for oral argument and/or further consideration and that pending such reopening, further hearing, oral argument and further consideration, will vacate its order of July 3, 1933, or postpone the effective date thereof to permit orderly consideration of this petition, and finally as a result of such further hearing and/or reconsideration will find that the present intrastate rates in the Chicago switching district in Indiana and in Illinois violate no provision of the inter-

state commerce act, and will vacate the order instituting these proceedings.

Respectfully submitted,

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CHARLES E. BYRNE,
ANDREW OLSON,
ERNEST J. KRUETGEN,
Commissioners.

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August 15, 1933.

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BRIEF IN SUPPORT OF PETITION.

In the petition herein we have briefly set forth the errors which, as we think, are contained in the Commission's report and order, and the findings which the Commission should have incorporated in its report. We now submit our argument in support of the contentions presented in the petition.

I.

THE LAWFULNESS OF SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT HAS BEEN UNDER CONSIDERATION BY THIS COMMISSION FOR A NUMBER OF YEARS. THE REPORT AND ORDER OF JULY 3D IS, AS WE THINK, ENTIRELY BEYOND THE POWER AND AUTHORITY OF THIS COMMISSION, WAS MADE ON A MISUNDERSTANDING, AND LACK OF UNDERSTANDING OF THE EVIDENCE OF RECORD.

We shall point out to the Commission not only the evidence of record which negatives the primary finding of the Commission that unjust discrimination against interstate commerce results from the present relationship between intrastate and interstate switching rates, but all the evidence of record bearing upon that question; we are confident that on further consideration of this matter, with its attention directed specifically to all the evidence the Commission will find that there is no unjust

discrimination against interstate commerce and that the effect of the Commisson's order will be to deplete the revenues of the carriers rather than to augment them.

The petition sets forth three fundamental and necessary findings by the Commission which are without any support in the evidence of record.

In the Commission's report is contained an extract from the decision of the Supreme Court in *Florida* v. *United States*, 282 U. S. 194, 75 L. Ed. 291, but as we read the decision in that case, the Commission's report does not conform to the principle of law there laid down. That case requires the Commission to make appropriate findings upon evidence to support any order which the Commission makes in order to remove an undue burden

from a revenue standpoint upon the interstate carrier or to remove unjust discrimination against interstate commerce. While the Commission quotes the language of the Supreme Court in that opinion:

> "The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

The Commission, in the present case, wholly disregards the principle of law so stated by the Supreme Court and proceeds to make the finding that increased revenues will result from increasing the intrastate rates in the face of abundant uncontradicted evidence that not only are the interstate rates so high as to be pro-

hibitive of movements of much carload traffic in the Chicago switching district, but in the face of the evidence that to raise the intrastate rates to the interstate level will result in a further loss of important tonnage to competing forms of transportation to such an extent that the carriers will lose, without any possible hope of regaining, the tonnage so diverted from the rails to trucks, water and pipe line.

It is unfortunate that the policy which the respondents outside of Chicago district seem to have adopted and increasingly to put in effect, of making rail rates that will meet the rates of competing forms of transportation, has wholly been disregarded when it comes to making rates in the Chicago switching district. Some of the switching business which has been diverted from the rails can be regained if the present interstate rates be reduced to a reasonable level. Some of the business that will be lost if the interstate rates continue is still moving by rail because of the desire of the shippers to use rail transportation; but if the increased rates author-

ized by the Commission's order become effective on intrastate commerce on all commodities moving in the Chicago switching district, the carriers will lose forever, without any possibility of securing the return to the rails, a large and important tonnage. The rates authorized by the Commission practically destroy profitable operation by the carriers in Chicago switching service. We believe that the Commission, after giving consideration to the

evidence which we now submit in detail, will realize that its order was made under a mistake and misapprehension of the results which have followed the increase in the interstate rates and which indubitably will follow the increase in intrastate rates.

There is no evidence in this record upon which the Commission can find that a substantial increase in revenue will result if intrastate rates are increased to the interstate basis; nor is there any evidence that no substantial proportion of traffic now moving by rail intrastate will be diverted to other forms of transportation if rates found reasonable for interstate traffic are applied to intrastate traffic.

Notwithstanding that the Examiners who heard the testimony of all the witnesses and are thoroughly familiar with the testimony of record, found in their proposed report, Sheet 42,

> "The record does not indicate that an increase in the intrastate rates to the level of the interstate rates would result in increased revenue to the carriers."

this Commission in its decision, Sheet 45 [195 I. C. C. 118], finds that

> "the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if

the intrastate rates are increased to the interstate basis, and we so find."

We are at a complete loss to explain the failure of the Commission to adopt the Examiners' proposed report on this aspect of the case. We now ask the Commission to

consider all the evidence bearing upon this phase of the case and *we challenge the respondents in answering this petition to point to any evidence upon which this Commission could find that increasing the intrastate switching rates in Illinois and Indiana will result in a substantial increase in revenue to the carriers, and any evidence that no substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if intrastate rates be increased to the interstate basis.*

We insist that all of the testimony on this phase of the case shows that to increase the intrastate rates will result in a loss of revenue to the carriers and will result in the diversion of a substantial proportion of the traffic now moving by rail intrastate, to trucks, to barges, and/or to pipe lines.

We first direct the Commission's attention to the evidence submitted on behalf of the respondents. The principal witness on behalf of the carriers' petition for a 13th section order, was presented by Mr. Vivian, statistician for the Chicago, Milwaukee, St. Paul & Pacific Railroad. His testimony was an elaboration of certain exhibits intended primarily to show the annual loss to the carriers by reason of the refusal of the state commissions to permit the interstate rates of 3, 3.5 and 4. cents to become effective on 1-line, 2-line and 3-or-more line hauls on intrastate traffic. (Vivian, 2157-59.)

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Mr. Vivian expressly stated that he did not know anything about whether the competition within the district by truck and by barge will take more business from the carriers, if rates be increased to the interstate basis, than under the present intrastate basis. (Vivian, 2426.)

Exhibits presented by him showing the estimated loss in business to the carriers *assumed* that the carriers will have the business on the higher basis of rates. Mr. Vivian admitted that the carriers are losing business to the trucks all over the United States and insisted that there is no more danger to the carriers from truck competition in the Chicago district than there is in any place in the United States. (Vivian, 2441.)

Revenue losses shown on the exhibits presented by him were *predicated on the assumption* that all of the present intrastate traffic would move on the increased rates. (Vivian, 2524-25.)

Mr. Vivian admitted that he had no information as to any change in the flow of interstate traffic from rail lines to truck or water movements since the increased interstate rates became effective on December 10, 1931, and that he had no information as to similar traffic changes intrastate subsequent to the *Ex Parte* 103 increases. (Vivian, 3243.)

Mr. Vivian testified that the carriers are competing with the trucks for the handling of intra-district carload freight and are meeting truck prices in the district, but

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he stated that he knew no more about the subject than is embraced in the testimony we have just referred to. (Vivian, 3243.)

Having in mind the decision of the Supreme Court in

the *Florida case*, that to increase rates does not necessarily increase revenue, there must be an affirmative finding by the Commission upon definite testimony. Certainly Mr. Vivian's testimony does not afford a basis for any such finding.

The following witnesses testified on behalf of the respondent but not one of them gave any testimony as to the estimated revenue which would result from increasing intrastate rates to the interstate basis nor any testimony whatever that an increase in the intrastate rates would result in an increase in revenue:

George J. Shreeve, General Superintendent, Belt Railway of Chicago (Rec., 2199); R. A. Barlow, Trainmaster, The Baltimore & Ohio Chicago Terminal Railroad (Rec., 2333); F. A. Meyer, Operating Department, Indiana Harbor Belt Railway (Rec., 2375); C. L. Whiting, Superintendent of Terminals, Chicago, Milwaukee, St. Paul & Pacific R. R. Co. (Rec., 2403); J. P. Falk, Division Superintendent, Chicago, Burlington & Quincy R. R. (Rec., 2410.) All of the witnesses just named dealt with operating matters and gave no testimony as to revenue under present or proposed rates.

Only two traffic men testified on behalf of the carriers.

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These were W. H. Ward, General Freight Agent of the Indiana Harbor Belt, and H. N. Jouver, General Freight Agent of the Baltimore and Ohio Chicago Terminal.

Mr. Ward testified that he had made no investigation to determine whether increasing rates on crushed stone within the district would have the effect of reducing or increasing revenues of the Indiana Harbor Belt, and had formed no opinion on the matter. (Ward, 2743, 2744.) He did know that more and more stone is being trucked every day. (Ward, 2745.)

Mr. Ward testified that at most of the plants on his line with very large operation the B. & O. C. T. received refuse material which moved under rates which were exceptions to the Lowrey basis. The tonnage was tendered

> "in big units of ten to fifteen or twenty or twenty-five cars at a whack." (Ward, 2740, 2741.)

The situation in regard to the movement of crushed stone is somewhat different than the movement of commodities generally. (Ward, 2743.)

Mr. Jouver made no investigation to determine whether the going into effect of the increased rates on crushed stone would increase revenue either for the Baltimore and Ohio Chicago Terminal or for carriers generally. (Jouver, 2793.) Nor had he made any investigation to determine whether the 10 per cent increase in the intrastate switching rate had any effect on the move-

ment of traffic in the switching district. (Jouver, 2794-2795.)

The foregoing evidence is all of the testimony of the traffic witnesses which has any relation to the effect which would follow from increasing intrastate rates to the interstate basis, and affords no basis whatever for any finding that the revenue of the carriers would be greater as a result of increasing intrastate rates to the interstate basis. We come now to consider the testimony of the shippers.

(The record in the formal complaint case does not follow the paging consecutively of Docket 19610; where we refer to pages of the formal complaint record in Docket 24950 we use the initials "FC" before the page number.)

Standard Oil Company of Indiana. F. S. HOLLANDS, Assistant Traffic Manager, testified on behalf of the Standard Oil Company of Indiana:

At the original hearing the statement was made by Mr. Hollands that if the increased rates as originally published by the carriers were made effective it might force the Standard Oil Company of Indiana to handle considerable of its business by truck. Exhibit No. 1 of the formal complaint case shows the location of the bulk stations of the Standard Oil Company of Indiana and the number of cars shipped by rail to each during the calendar year 1931. This exhibit shows that during 1931,

10,821 cars of petroleum and its products moved from Whiting, Indiana, to the 21 stations shown on the exhibit. To the first 8 stations shown, 3,907 cars moved by rail during 1931. Mr. Hollands testified at the May hearing in 1932 that up to that time all of the shipments to these 8 stations in 1932 had moved and would thereafter move by truck if the rates continued on the interstate basis. The saving between truck costs and rail costs to station No. 1, Englewood, amounted to $10.16 per car. The total saving on all shipments to the 8 stations on 3,907 cars amounted to $36,776.46, or an average of $9.41 per car. To the next 5 stations shown on the exhibit, 14th Street, Blue Island, Clearing, Harvey and Chicago Heights, the company has a contract with a trucking company for services at cost figures less than the cost of handling by railroad but to those particular stations the company had not at that time moved any large volume by truck. (Hollands, FC-20.)

Mr. Hollands had felt that there was a possibility of a compromise with the carriers and if that were accomplished it would avoid continuing the movement by truck.

To extend trucking to these points means an outlay for additional equipment on the part of truck owners and if the Standard Oil Company allowed them to spend the additional money it would be necessary to enter into a contract for truck services for a period of not less than one year. On the basis of shipments to the first 12 stations shown on the exhibit, to which 5,229 cars moved in

1931, the Standard Oil Company is in position by truck under the contract referred to, to handle approximately one-half of the total movement. (Hollands, FC-21.)

During the railroad strike of 1920 the Chicago business of the Standard Oil Company was taken care of by using one of its boats and distributing throughout the city by truck. Just recently communications have been received from a steamship agent soliciting business from the Whiting refinery for deliveries on the lake or Chicago River in a smaller boat than that which is operated on the Great Lakes. (Hollands, FC-21.)

Mr. Hollands was thoroughly familiar with the cost of handling petroleum products on the lakes and if the present rates continue in effect, will certainly make a survey to determine what action will be taken with respect to handling the business to the plants in the Chicago switching district. As Mr. Hollands said, "there is no question in my mind but what we can handle it by water at very much less than the present rail rate." (Hollands, FC-22.)

Due to the persistent solicitation on the part of various trucking companies, who have been insistent that they be furnished package goods out of the Whiting plant, such as oils, greases in barrels and cases, Mr. Hollands was making an extensive survey to determine

what was to be done. At the time of the hearing a very small part of this business was handled by truck because of lack of platform facilities at the Whiting refinery for

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package goods trucking in a large way. At that time some package goods were moving by truck from Whiting to such points as Indianapolis, Terre Haute, Detroit, etc. (Hollands, FC-22.)

Referring to Mr. Saur's testimony on the part of the carriers as to trucking costs at St. Louis, Mr. Hollands pointed out that his company was handling all of its gasoline, kerosene and furnace oil by truck from Wood River, Illinois, to St. Louis stations, a distance of about 30 miles and over a toll bridge. (Hollands, FC-24.)

Mr. Hollands stated that some deliveries will be made by pipe line in the Chicago switching district if the intrastate rate is increased. There is a pipe line from the refinery at Whiting to some of the plants in the Indiana district. (Hollands, FC-25.)

The Standard Oil Company of Indiana has a sufficient volume of business and there is no trouble whatsoever in operating trucks day and night, in fact, from the Standard Oil Company's standpoint it is less trouble to handle by truck than to handle by railroad because the transportation by cars must be watched. (Hollands, FC-32.)

The carriers have published rates to meet competition from Whiting to certain Illinois points outside the switching district where there has been a movement by truck and the carriers made such rates as would put the business back on the railroad. The Standard Oil Com-

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pany in all such cases where the carriers have met truck competition has restored the movement to the railroad. (Hollands, FC-32.)

Inland Steel Company. W. J. HAMMOND, Traffic Manager, testified on behalf of the Inland Steel Company:

While trucking costs may be equal to, or even greater in some instances than the switching costs for carload movement, the saving from purchasing smaller quantities with smaller investment, as compared to the necessity for purchasing larger quantities moving in carloads with an outlay of funds for material that would remain in storage indefinitely, goes far to offset the payment of the higher trucking cost. When a truck is used, little or no cost is incurred for bracing, blocking or wrapping of steel, which represents a substantial cost in making rail shipments. Trucks are loaded in one or two "lifts" and delivery is made a few hours after the truck leaves the plant, whereas the railroads require from two to four days to make this same delivery. When the costs incident to rail shipment are added to the switching rates a more accurate comparison of the costs of handling by truck and by rail results. (Hammond, FC-41.)

Since the previous hearing many new and important highways have been built in and around the Chicago switching district and are being utilized extensively for the handling of commodities that previously moved by rail in switching service. (Hammond, FC-42.)

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Formerly the Inland Steel Company handled none of its finished products by truck but since the interstate rates were increased on December 10, 1931, it has been compelled to use trucking service, which is increasing

rapidly. For the first three months of 1932 the Inland Steel Company handled to the Chicago switching district approximately 5,000,000 pounds of finished products by truck. (Hammond, FC-42.)

Mr. Hammond stated that if the proposed interstate rates are made effective on intrastate traffic the additional burden for switching traffic will further divert a large share of the present tonnage moving via rail to the trucks and will reflect less revenue to the railroads. (Hammond, FC-44.)

Within the three weeks prior to the hearing in May, 1932, the Inland Steel Company had been notified by the largest purchaser of sheet steel in the switching district that it would accept no more carload deliveries of these sheets. This purchaser of sheet steel and others are using trucks because of the low cost and improved service in handling. The commodities trucked are not in any sense limited to sheet steel. The condition as to that commodity had been brought about within the two weeks prior to the hearing in May, 1932. (Hammond, FC-48.)

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Interlake Iron Corporation. G. H. STAAT, Traffic Manager, testified on behalf of this company:

The Interlake Iron Corporation makes shipments from its coke oven plant on the Chicago Short Line R. R. of tar, light oil, sulphate of ammonia and ammoniacal liquor, and there receives shipments of coal. At its blast furnace plant on the Indiana Harbor Belt and Pennsylvania Railroads the inbound shipments are coal, coke, clay, flue dust, ore, limestone and sand, and the outbound shipments are pig iron and slag. (Staat, FC-71.)

At the time of the hearing in May, 1932, limestone was

received by rail locally at a rate of 40 cents per ton. If the single line rate on Illinois intrastate traffic be increased to 60 cents per ton this limestone, Mr. Staat believed, would be received by vessel or by truck. Flue dust is received from the Chicago, West Pullman & Southern on a combination rail rate of $6.50 per car and $8.10 per car, a total of $14.60 per car. An increase to the 2-line rate of 70 cents per net ton would, without question, divert the movement from rail to truck. (Staat, FC-72.) This flue dust could be moved by truck at a cost of not more than 18 cents per net ton. (Staat, FC-80.)

There is a movement of pig iron from the furnaces to the Republic Steel Corporation, adjacent to the plant, at a rate of 40 cents per gross ton, minimum 100,000 pounds. If this rate be increased to 67.2 cents per gross

ton (the equivalent of 3 cents per 100 pounds) the Interlake Iron Corporation will either truck the pig iron the few blocks involved, or extend its plant tracks into the Republic plant and perform the service with its own power causing a revenue loss to the Indiana Harbor Belt Railway or the Pennsylvania of at least $18 per car on every car so handled. Taking the 3-year annual average of 65,427.66 tons of pig iron moved to the Republic Steel Corporation, the loss to the railroads would be, annually, $26,171.06, instead of a gain in revenue of $17,796.32. (Staat, FC-76.)

There is a daily movement of tar to The Barrett Company via Chicago Short Line, Belt Railway and Chicago, Illinois Western, at 2.5 cents per 100 pounds. This is a 3-line haul, which would be subject to the increased rate of 4 cents, an increase of 30 cents per ton. This tar will move by tank barge if the rates be increased. (Staat, FC-76.)

The daily coke requirements for the Interlake Iron Corporation formerly moved via the Chicago Short Line and Pennsylvania Railroads at 50 cents per net ton. That cost was too much of a burden for the furnaces to carry. By the use of trucks this coke requirement is being moved for not more than 18 cents per net ton by three contract trucks. During the period from June 16, 1931, to April, 1932, there has been handled by truck 100,042 tons of coke, a monthly average of 10,530 tons. At 50 cents per ton, the rail loss is $5,265 each month. (Staat, FC-76-79.)

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Grasselli Chemical Company. Testimony on behalf of this company was presented by J. W. Brown:

The Grasselli Chemical Company in 1930 shipped from its plant at Grasselli, Indiana, in the Chicago switching district, intrastate to Indiana destinations in the district, 83,862,080 pounds of sulphuric acid on a rate of 2 cents per hundred pounds, with no allowance for car hire. (Brown, 2616.) The present rate intrastate in Indiana is now 10 per cent higher or 44 cents per ton. The trucking cost from Grasselli to Indiana Harbor, Indiana, is 31.5 cents per net ton (Brown, 2628), and the pipe line cost to East Chicago, Indiana, is 36 cents per net ton. (Brown, 2629.)

If the intrastate rate be increased to 3 cents per hundred pounds or 60 cents per net ton, a pipe line will be in operation within two weeks after the rate is advanced, and what does not move by pipe line will be moved by truck. (Brown, 2630-2631.)

The reason Grasselli Chemical Company has continued to ship by rail notwithstanding the lower possible costs by truck and by pipe line, is that the plant was designed

for rail shipments and sulphuric acid is sold on a per-car basis. If rates be increased the plant will be rearranged so as to permit the use of trucks and pipe lines. (Brown, 2632, 2633.)

The inbound costs of trucking phosphate rock from East Chicago dock in Indiana to Grasselli is less than

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25 cents per net ton, and this contract will be extended to cover trucking of coal, salt, and other commodities. (Brown, 2643, 2647.)

Consumers Company. W. J. Womer, Traffic Manager, testified on behalf of this company:

The only two building construction jobs of any consequence now running in the Chicago district are being supplied with crushed stone wholly by truck, the new Post Office building being erected over the tracks of the carriers, on air rights, using approximately 50,000 tons or 1,000 cars, and the new Field building using approximately 25,000 tons. (Womer, 2979-2980.)

Two or three years ago there was virtually no stone trucked from the quarries as there were no facilities for efficient and economical loading; competition has forced the installation of these facilities and use of trucks from the quarries. (Womer, 2980.)

If intrastate rates be increased the carriers will lose revenue because the movement of stone will change from rail to water or truck, or both. Stone can be trucked cheaper than it can be moved by rail on the present intrastate rate. (Womer, 2981.)

When switching rates, intrastate, were increased 10 per cent some stone shipments were diverted from rail to trucks. (Womer, 2982.)

The present rates, intrastate and interstate, on crushed stone are entirely too high, are more than

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crushed stone as a class of traffic will bear, and will force the use of other forms of transportation. (Womer, 3010.)

Since the hearings in the former case closed in 1928 a number of highways have been paved, some have been widened; new arteries have been opened up; trucks are more numerous, and competition between trucks is keener. (Womer, 3012.)

Outside of the Chicago switching district the carriers have made efforts to establish rates that would keep the crushed stone business on the rails; no such efforts have been made within the switching district. (Womer, 3012.)

Mr. Womer testified that the establishment intrastate of the interstate rate basis of 3 cents, 3.5 cents and 4 cents on crushed stone—

> "is not going to help the railroads get a movement of crushed stone; that is going to help drive it away quicker than any other one thing that I know of." (Womer, 3013.)

Moulding-Brownell Corporation. E. L. MAYNARD, Traffic Manager, testified on behalf of this company:

This company is engaged in the building material business, operating stone quarries, sand and gravel and brick plants, with 23 distributing yards located in all sections of Chicago. (Maynard, FC-247.)

The company owns 80 trucks and also makes contracts for the handling of its business by truck, the maximum

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cost of hired truck service is 44 cents per ton. The maximum haul by trucks is between 16 and 17 miles.

Before making any quotations on any particular job the sales department ascertains the freight rates and then handles with the operating department as to the trucking costs. The job is handled by rail or by truck, whichever is cheapest. (Maynard, FC-251-255.)

There has been some movement by rail in the Chicago switching district to points in Indiana since the increase in freight rates, but most of that stone is now moving by truck. (Maynard, FC-255.)

It is the desire of the Moulding-Brownell Corporation, and other producers for whom Mr. Maynard spoke, that a rate be established which will permit the movement by rail to points in Indiana and to other points in the district, as these producers prefer to handle their material by rail rather than by truck. (Maynard, FC-256.)

Much sand and gravel goes by water, either on the lakes, drainage canal, or Chicago River and affords competition to local material. The Moulding-Brownell Corporation, in connection with this business, operates 5 boats. These and other boats are actively engaged in handling sand, gravel and crushed stone for the company in substantial amount. Water transportation has been so serious that the Elgin, Joliet & Eastern has eliminated the emergency charge on sand, gravel and crushed stone from producing points on its line to Gary and South

Chicago. The movement of stone and gravel to the district from lake ports has been in substantial quantities and has had very serious effect upon the sale and distribution of sand, gravel and crushed stone in the district. (Maynard, FC-316-323.)

Dolese & Shepard Company. O. P. CHAMBERLAIN, President, testified on behalf of this company:

This company is a wholesaler of crushed stone. There has been a tendency, particularly in the past 3 years, to divert the handling of stone in the Chicago district from rail to truck, but the company has not encouraged that movement at all for, in the judgment of Mr. Chamberlain, it is much better business, everything else being equal, to load the stone on cars and move it by rail to its destination within the district, if that be possible. Conditions have been such that the company has been forced to change its facilities by adding truck loading facilities. (Chamberlain, FC-290.)

As illustrating the diversion from rail movement to truck movement: in 1931, the truck deliveries of stone from the company's quarry amounted to 18.3 per cent; during the first four months of 1932, truck deliveries amounted to 31.2 per cent of the total deliveries. (Chamberlain, FC-291.)

In September, 1931, previous to the increase in rates, interstate, considerable stone was shipped to Whiting, Indiana Harbor and East Chicago. When that rate was

increased from 50 cents to 70 cents for the 2-line haul, the business was lost by the Dolese & Shepard Company to a quarry nearer to the Indiana line, and the stone has moved by truck. (Chamberlain, FC-297.)

Dolese & Shepard has not had a carload shipment this year, 1932, to Indiana points within the switching district, although it is the desire of the company to continue to enjoy its market in the Indiana switching district. Mr. Chamberlain considers it much more profitable as a business proposition to load stone on cars and

ship it by rail rather than by trucks, because the operation is simpler; there is less weighing and cheaper handling at the quarry, but the company has been practically driven by conditions to the use of trucks. (Chamberlain, FC-297.)

Acme Steel Company. S. L. FELTON, Traffic Manager, testified on behalf of this company:

He stated that between the Archer Avenue plant and the Riverdale plant of this company there was an important switching service; consideration had been given to the dismantling of the Archer Avenue plant and the transferring of operations to the Riverdale plant. Only because of the Archer Avenue plant being the initial plant of the company and held at the lowest overhead cost, had the transfer of operations not already been made. Any increase in the transportation cost from Archer Avenue to Riverdale hastens the discontinuance

of operation at the Archer Avenue plant and the consequent loss of that tonnage to the carriers. (Felton, FC-199.)

Youngstown Sheet & Tube Company. H. H. BASCOM, Assistant Traffic Manager, testified on behalf of this company:

At the former hearing Mr. Bascom pointed out that there was a movement of coal from the steel plant to the coke plant; and of coke from the coke plant to the steel plant; if the rates on those movements be advanced to the Lowrey basis arrangements would be made for a different method of transportation. Prior to any change in the rates the company put in a method of handling those materials by conveyor at costs even lower than the

rate formerly in effect by rail. While at the time of the hearing in May, 1932, the company had not moved any heavy tonnage by truck between its plants at South Chicago and Indiana Harbor, investigation shows that it is possible to move pig iron from South Chicago to the Indiana Harbor plant at a rate not in excess of 50 cents per ton. (Bascom, FC-210.)

International Paper Company. THOMAS E. REILLY, Traffic Manager, testified on behalf of this company:

Moving paper from Crooks Terminal Warehouse on the Chicago, Burlington & Quincy to a point on the Chicago & Alton would require a 3-line haul. The present switching rate is $15 for a minimum of 60,000 pounds.

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The trucking charge is $12 per car. The proposed rate would be $21 per car, an increase of $9 per car. Paper is being moved from the warehouse and from the mill to customers in the Chicago switching district. Some of it is moving by rail, depending on the relative cost. (Reilly, FC-224-26.)

If the mill, now closed down, resumes manufacture, it will not use the railroads for movements to points in the Chicago switching district, if the increases in rates become effective on intrastate traffic. (Reilly, FC-226.)

Illinois Brick Company. H. G. BROWN, Traffic Manager, testified on behalf of this company:

This company has ten plants in the vicinity of Chicago, six being within the switching district and four immediately outside. Mr. Brown presented typical truck costs and typical truck movements. To the post office job, on rail shipments, the costs were 87.5 cents per thousand brick for loading, 27.5 cents unloading

charge at destination team track, $1 trucking charge from team track to building construction, rail rate equivalent $1.10 per thousand brick, making a total of $3.25 per thousand brick, or $1.625 per net ton. The truck movement from plant to the same building construction, less than 16 miles, cost $1.95 per thousand brick, or 97.5 cents per ton—65 cents per ton less than when transported by rail. (Brown, FC-234-236.)

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The Barrett Company. J. L. ROBERTS, Traffic Manager, testified on behalf of this company:

The Barrett Company has a plant at the south fork of the Chicago River at which it produces paving tar principally, roofing tar and creosote oil, from crude coke tar received from the Interlake Iron Corporation and the Wisconsin Steel Company. For a number of years this crude tar was handled into the plant by tank barges owned by the Barrett Company, but at the insistence of the rail companies, the movement was changed from barge to tank cars. (Roberts, 3022.)

The annual movement intrastate switching of crude tar is 80,000 tons, on a rate of 2.5c without allowance for car hire.

The Barrett Company has barge equipment and the installation of pipe line connection to and from the barge is a minor matter. If the present rates be increased from 2.5c to 3.5c for rail movement, all of the crude coke tar will be diverted from rail to barge. (Roberts, FC-826, 3023.)

The present annual revenue on 80,000 tons at 2.5c is $40,000. On 3.5c rates the revenue would be $56,000.

In an effort to get $56,000 the carriers will lose their present $40,000.

In addition to the foregoing testimony presented by shippers' representatives Mr. O. R. Livinghouse, for five years head of the Traffic Department of the Public Ser-

vice Commission of Indiana, expressed the opinion, which undoubtedly was based on his experience, that if costs today are higher the carriers should be entitled to higher rates, and "the transportation would probably seek other forms of transportation than to use rails."

There is no other testimony of record in the case bearing upon this question so far as we have been able to ascertain. The record is clear, unequivocal, all one-way, and affords no possible basis for any findings other than: (a) on present intrastate rates in Illinois and Indiana a large volume of traffic is moving via truck, by water or by pipe line; (b) shippers, even though they could move their shipments by these forms of competitive transportation and save money as compared with rail costs have, because of their desire to give the railroads the business, paid higher transportation costs than were available by truck, by water or by pipe line; (c) if the disparity between costs of shipment by truck, by water, and by pipe line, as compared with rail rates, be still further increased, the carriers will lose a great volume of business. No testimony by any witness is contained in this record from which the Commission can find that a substantial increase in revenue will result if intrastate rates are increased to the interstate basis, nor any evidence from which the Commission can find that no substantial proportion of traffic now moving will be diverted to

other forms of transportation if the intrastate rates be advanced to the interstate basis.

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In order to find that a disparity in rates on intrastate traffic and on interstate traffic constitutes unjust discrimination, the record must disclose facts showing, and the Commission must find, (a) that the intrastate traffic and the interstate traffic must be of a like kind; (b) that the service rendered on intrastate traffic and on interstate traffic is of a like and contemporaneous character, performed under substantially similar circumstances and conditions; (c) and the disparity between the level of interstate rates and intrastate rates must be so substantial as to operate as a real discrimination against and as an obstacle to interstate commerce.

The phrase "unjust discrimination" has been a part of the Interstate Commerce Act since 1887, being used in Section 2. In the absence of any clear showing to the contrary, it must be assumed that when the same phrase is used in Section 13, Paragraph 4, which was made a part of the Interstate Commerce Act by the Transportation Act of 1920, it was intended to have the same definition and interpretation as had theretofore been made of the phrase in Section 2.

In many cases, both by the Commission and by the courts, the term "unjust discrimination" used in Section 2, and the term "preference and prejudice" used in Section 3, have been used interchangeably. The underlying thought in unjust discrimination is different treatment, when, under the circumstances and conditions existing, there should be no difference in treatment.

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The language of the Statute in Section 2 sets forth as necessary factors in unjust discrimination: (a) a like and contemporaneous service in the transportation (b) of a like kind of traffic, (c) under substantially similar circumstances and conditions; unless all three of these factors existed in a particular case there was no "unjust discrimination" shown.

The service performed on interstate traffic and intrastate traffic is not of a like and contemporaneous character, performed under substantially similar circumstances and conditions.

The service performed on Indiana intrastate traffic and Illinois intrastate traffic is not the same as that performed on interstate traffic. The report of the Commission itself shows that the average 1-line haul of intrastate traffic in Indiana is only 6.3 miles as compared with 14.7 miles, the average haul on intrastate traffic in Illinois and 15.0 miles, the average haul on interstate traffic between Indiana and Illinois.

The average hauls shown of record and used by the Commission in Sheet 40 of its report relate entirely to cost study cars shown on Exhibit Number 97. The average haul for Indiana intrastate 1-line, was 6.3 miles, computed on 2,426 cars where the total operating expenses were only $40,289. The average for the Illinois intrastate 1-line was computed on only 1,951 cars and is shown as 14.7 miles. The average interstate haul, 1-line, was 15 miles; computed on 7,573 cars.

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The record shows that the Chicago Junction in September, 1926, handled intrastate in Illinois 1,764 cars

other than iron and steel, and 14 cars of iron and steel, a total of 1,778 cars in 1-line hauls. None of these 1-line cars were embraced within the cost study. (Tholin, 2869.) Assuming that one-fourth of these cars had been representative of a week's service and had been embraced in the cost study, we would have had 444 cost study cars additional. The average haul of the Chicago Junction in September, 1926, was 1.6 miles. Applying this average to the 444 cars which should have been in the cost study, and consolidating with the 1-line cost study cars makes the average 1-line haul, Illinois intrastate, 12.3 miles. So, had the 444 cars of the Chicago Junction been included in the cost study we would have had a total of 2,395 cars and the average haul per car would have been reduced from 14.7 to 12.3 miles, which is approximately 80 per cent of the average haul on interstate cars.

Indiana intrastate cars receive a 1-line service of substantially less than one-half that performed on the interstate 1-line cars. When we consider the relative cost of handling 1-line cars, as shown in Exhibit No. 97, we find that the operating expenses per hundred pounds on Indiana intrastate is 1.7c as compared with 1.85c on interstate traffic.

When we come to consider 2-line hauls we find there that the cost study has shown, Exhibit No. 95, an average haul on 5,853 Illinois intrastate study cars, of

15.9 miles as against an average on 5,472 interstate cars of 27.5 miles; the costs per hundred pounds on the Illinois intrastate were 2.03c as against 2.49c interstate. On Indiana 2-line intrastate cars the average haul was only 7.3 miles as against the average interstate haul of 27.5 miles.

On 3-line cars the average haul, Illinois intrastate, on 1,930 cars was 23.4 miles as against 34.2 miles on interstate. So we have in the foregoing facts relative to averages a clear showing supporting the dissent by Chairman Farrell and Commissioner Aitchison, on the ground that the disparities in rates were justified by the differences in service. All these facts relate to the cost-study cars, as shown in Exhibit No. 97.

Similar facts are contained in Vivian's Exhibit No. 99, which shows an average car haul on Illinois intrastate traffic in September, 1926, of 7.46 miles 1-line, of 15.77 miles 2-line, and 22.7 miles 3-line, being the averages on all Illinois intrastate traffic in September, 1926.

One of the most important facts to be considered in comparing these figures has not been emphasized, heretofore: notwithstanding Illinois intrastate traffic constituted 45.5 per cent of the total 1-line movement in September, 1926, only 16.3 per cent of the total 1-line study cars was Illinois intrastate. The average haul on all Illinois intrastate 1-line traffic (8,968 cars) moving in September, 1926, was 7.46 miles as appears in Vivian's Exhibit No. 99. We insist this latter figure is more

representative of the service performed on Illinois intrastate 1-line traffic than is 14.7 miles the average computed on 1,951 study cars only which were only 16.3 per cent of the total Illinois intrastate traffic.

The Indiana 1-line intrastate average haul of 6.3 miles was computed on study cars which were 94.8 per cent of the total Indiana 1-line intrastate moving in September, 1926.

The 1-line interstate average haul of 15 miles was

computed on study cars which were 92.7 per cent of the total 1-line interstate moving in September, 1926.

If the study cars embraced in the 1-line Illinois intrastate had constituted the same prgeentage of the total 1-line Illinois intrastate as did the 1-line Indiana intrastate and the 1-line interstate, the average haul for 1-line Illinois intrastate would have approximated the 7.46 miles shown for all such traffic in Vivian's Exhibit No. 99.

When we come to consider the 2-line Illinois intrastate traffic we do not find such a disparity in average hauls on the study cars and the total cars handled in September, 1926, as in the averages on the 1-line traffic Illinois intrastate. Illinois intrastate 2-line study cars were 50.9 per cent of the total study cars and the total Illinois intrastate 2-line cars in September were 57.0 of the total 2-line cars in that month;

the average haul on suclr study cars was 15.9 miles and on the total moving in September was 15.7 miles clearly indicating the volume of study cars was sufficient to reflect the average of the total handled in Illinois intrastate 2-line.

So we correct the showing as to average hauls on Illinois intrastate 1-line for study cars on sheet 40 of the Commission's report by substituting the average for all of Illinois 1-line intrastate traffic in September, 1926, shown in Vivian's Exhibit No. 99, and add columns showing the percentages that the Illinois intrastate, Indiana intrastate and total intrastate are of the interstate averages, using data shown in Exhibit 97:

Average Hauls	Illinois	Percentage of Interstate	Indiana	Percentage of Interstate	Average Intrastate	Percentage of Interstate	Interstate
1-line....	7.46	49.7	6.3	42.	7.2	48.0	15.0
2-line....	15.9	57.8	7.3	26.5	15.6	56.7	27.5
3-line....	23.4	68.4	...	...	23.4	68.4	34.2

In view of this showing it is not possible to find that the disparities in rates intrastate and interstate are not warranted by disparities in service for which the respective rates are charged.

So far we have dealt with averages of all commodities; now let us note some of the facts as to particular commodities and these are of more important consideration since we are dealing with rates for individual services on commodities.

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The average haul intrastate on 83,862,080 pounds of sulphuric acid 1-line intrastate Indiana of Grasselli Chemical Company was 4 miles, covering hauls ranging from 200 feet to 8 miles; the shortest interstate haul of the same company was 25 miles.

The 1-line Illinois intrastate average in 4926 on crushed stone in the switching district was 13.64 miles on 11,676 cars and the interstate average was 27.18 miles on 2,594 cars.

The Commission, in the light of this undeniable record, should adopt the dissenting opinion as the opinion of the Commission, holding the disparities in rates were justified by differences in services.

The intrastate traffic is not of a like kind to that of the interstate traffic.

The record does not show that the intrastate traffic in Indiana and the intrastate traffic in Illinois is of a

like kind to that transported in interstate traffic within the Chicago switching district. Exhibit No. 120 shows the interstate movement of both study and non-study cars for the month of September, 1926, by commodities, interstate, and Illinois and Indiana intrastate taken from Carriers' Exhibit 11A. It will there be noted that in 1-line movement there were 84 cars of wheat, Illinois intrastate, but no cars of wheat moved interstate during the same month.

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Similarly there were Illinois intrastate 1-line movements of hay, straw, and alfalfa, "other fresh vegetables," other products of agriculture, fresh meats, packing house products, eggs, butter and cheese, wool, hides and leather, anthracite coal, salt, "other products of mines," logs, posts, and poles, "other products of forests," vegetables oils, automobiles and trucks, fertilizer, paper and books, canned goods, none of which commodities moved in 1-line interstate movements during the month of September, 1926. The same exhibit shows that there was a 1-line movement, interstate, of the following commodities and no 1-line movement intrastate in Illinois: sugar, syrup, household goods and beverages. Of the commodities moving 1-line in largest volume there were 1,304 cars of packing-house products in Illinois intrastate and none in interstate traffic; 2,068 cars of clay, gravel, sand and stone moved Illinois intrastate 1-line; and only 631 cars moved interstate 1-line. Of the "miscellaneous" commodities, group number 69, only 874 moved 1-line interstate while 3,040 moved Illinois intrastate 1-line.

A similar analysis of the 1-line situation in Indiana discloses a like result. Many groups of commodities moved interstate that did not move Indiana intrastate

during September, 1926. Only twenty groups of commodities moved Indiana intrastate 1-line in September, 1926, while during the same period, interstate, there moved 47 groups.

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This analysis of the movement in September, 1926, which has been urged by the carriers as representative of the traffic flow in the switching district, clearly demonstrates that the character or kind of commodity moving intrastate in Indiana and intrastate in Illinois is not identical or of a like kind with that moving interstate.

In order to show unjust discrimination against interstate commerce the Commission must deal not with "all freight" as the traffic transported, but must deal with the commodities actually moving and must find on the evidence of record that the intrastate traffic 1-line in Illinois is of like kind with the 1-line interstate traffic. Similarly, the Commission must find that the 1-line intrastate Indiana traffic is of like kind with the 1-line interstate traffic. The evidence of record constitutes no basis for such a finding by this Commission.

The intrastate traffic is not transported under substantially similar circumstances and conditions to those surrounding the interstate transportation.

The third element or fact which the record must show clearly is that the traffic is transported under substantially similar circumstances and conditions in intrastate service and in interstate service. In the first place, it must be noted that the carriers which perform the 1-line interstate traffic are not the same carriers that transport the 1-line intrastate traffic. There are 26 carriers that do not perform any 1-line switching service in in-

terstate commerce over their own rails in the Chicago switching district and only 7 carriers that perform 1-line interstate switching service in the Chicago switching district. There is therefore a manifest difference in the circumstances and conditions surrounding the intrastate service and the interstate service in 1-line movement.

While the Commission finds in its report, Sheet 45, that transportation conditions throughout the Chicago switching district are substantially similar, that by no means is a finding that circumstances and conditions surrounding the service performed 1-line, intrastate, in Illinois is substantially similar to that surrounding the interstate, 1-line movement. For example, the cost study shows only 6.3 miles of railway on the average are used in performing 1-line switching in Indiana. Exhibit No. 99 shows the average haul of all traffic in September, 1926, moving 1-line Illinois intrastate was 7.46 miles, while 15 miles are used in performing the 1-line interstate.

Similarly, only 7.3 miles of railway are used in switching the average 2-line cost-study car in Indiana, and only 15.9 miles of railway in switching the average cost-study car intrastate 2-line in Illinois, while 27.5 miles are used in performing the interstate 2-line service.

For the 3-line movement in Illinois (there was no 3-line movement Indiana intrastate), the average requires 23.4 miles of railway while the interstate 3-line car requires on the average 34.2 miles. Moreover the

alleged cost figures shown by the carriers show different amounts, varying between the hauls intrastate and inter state. Therefore the record will not support a finding that circumstances and conditions are substantially

similar in the movement 1-line intrastate in Illinois and in Indiana to those surrounding the 1-line movement on interstate traffic.

The record likewise contains no basis for finding a similarity of conditions on 2-line and 3-line hauls intrastate with those on 2-line and 3-line hauls in interstate movements.

II.

THE COMMISSION'S REPORT OMITS IMPORTANT AND ESSENTIAL FINDINGS OF FACT.

In the petition of which this brief is a part we set forth in detail 22 findings of fact which the Commission should incorporate in its report, if that report is to properly reflect the pertinent facts of record.

Taking these up in the order in which they are set forth in the petition:

1. The service performed in switching on Illinois intrastate cost-study traffic, 1-line, is shown by the Commission's own report to be 14.7 miles as compared with 15 miles interstate 1-line haul. Elsewhere in this brief we have shown that the 14.7 miles intrastate was derived from a consideration of only 1,951 study cars shown on Exhibit No. 97. If the Chicago Junction, with its aver-

age haul of only 1.6 miles for 1-line Illinois intrastate had been included for the one week's study there would have been 444 cars, or a total of 2,395 cars and the average haul would have been 12.3 miles instead of 14.7 miles. If approximately the same percentage of cars moving had been embraced in the cost study 1-line Illinois intrastate as were embraced in the 1-line Indiana intrastate and 1-line interstate the average haul 1-line intrastate Illinois would have been approximately 7.46 miles. On 2-line

hauls the Illinois intrastate traffic is shown by the Commission's own report, Sheet 40, to be a little more than half the interstate haul, being 15.9 miles Illinois intrastate 2-line and 27.5 miles interstate 2-line; on 3-line hauls the average Illinois intrastate is 23.4 miles and 3-line interstate 34.2 miles.

The service performed in intrastate switching in Illinois is substantially less than that performed on interstate traffic.

2. The switching service performed 1-line intrastate in Indiana on cost study cars is 6.3 miles, while the interstate 1-line haul is 15.0 miles. The average service on 2-line Indiana intrastate was 7.3 miles and on 2-line interstate was 15 miles. There was no 3-line movement Indiana intrastate of the cost study cars but the average interstate haul, 3-line, was 34.2 miles. The service performed in intrastate switching in Indiana is substantially less than that performed on interstate traffic.

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3. The disparity between the intrastate switching rate for 1-line hauls in Indiana and Illinois and the 1-line interstate rate is ½c per 100 pounds. The service performed on Indiana 1-line intrastate is less than half the 1-line interstate service although the rate on the former is 92 per cent of the rate on the latter. The service performed 1-line in Illinois, if we give effect to the 1-line movement of the Chicago Junction, is 82 per cent of the haul performed on interstate 1-line, and if we take the average haul in September, 1926, on 1-line Illinois intrastate traffic of 7.46 miles is 49.7 per cent of the average interstate haul 1-line, while the rate 1-line Illinois intrastate is 92 per cent of the interstate rate.

The disparity in rate for 2-line hauls is ¾ cents per 100 pounds. The service performed on Indiana intrastate

2-line traffic is approximately 25 per cent of the service on 2-line interstate, but the rate on the former is 81.5 per cent of the rate on the latter. On 2-line hauls Illinois intrastate the haul is 57.8 per cent of the 2-line interstate haul, while the rate, Illinois intrastate, 2-line, is 81.5 per cent of the 2-line interstate rate.

The difference in rate for 3-line hauls is 7/10 cents per 100 pounds. The record discloses no 3-line haul Indiana intrastate. The average haul for 3-line Illinois intrastate is 68.4 per cent of the 3-line interstate haul and the rate, 3-line Illinois intrastate, is 82.5 per cent of the interstate 3-line rate. So that we find the dissenting opinions of Chairman Farrell and Commissioner Aitchison are

abundantly supported by the facts which show that the differences in rates are justified by the differences in services performed for the respective rates.

4. The Commission has not anywhere found that the intrastate rates charged for switching service on Illinois intrastate traffic are less than just and reasonable rates. If the rates charged for the intrastate service are not unreasonably low they cannot cast a burden on interstate commerce or in any way unjustly discriminate against that commerce. The Rules of Practice of the Commission, particularly III (n), require that complaints bringing in issue any state rate alleged to cause unjust discrimination against interstate commerce contain appropriate allegations to present for decision "the issue of the justness and reasonableness under Section 1 of the rates, fares, charges, classifications, regulations, or practices complained of in so far as applicable to interstate commerce and the issue as to what should be the rate therefor to be charged in order to remove such discrimination."

Clearly one of the issues in the instant inquiry is whether the intrastate rates complained of are just and reasonable for the service performed. There is no finding by the Commission on this matter and there should be a finding made with reference to the facts of record bearing on this question. We do not here again present the facts and argument, which have already been presented to the Commission, showing that the rates in

effect on intrastate traffic in Illinois are not less than just and reasonable, but we still insist the record clearly shows that rates of 2.5 cents, 2.5 cents and 3 cents for 1-line, 2-line and 3-line-or-more hauls are not less than reasonable rates.

5. What has been said in the preceding paragraph with relation to the rates on Illinois intrastate traffic apply with greater force to rates on Indiana intrastate traffic as the rates are the same and the average service performed in Indiana much less than the service performed on Illinois intrastate traffic.

6. This requested finding was argued fully in brief and oral argument and we shall not add to what was there stated. We simply ask the Commission to again consider the facts of record on this matter and correct its findings.

7. Elsewhere we have set forth the facts of record showing that a large proportion of the switching traffic moving interstate has been diverted to the trucks, waterways and pipe line. On this subject the Commission does find, Sheet 45, that existing competition by motor truck is material and that in all probability additional tonnage will be diverted to the trucks. There is a failure on the part of the Commission's report to clearly

point out the vast amount of tonnage which the record discloses has been lost to the carriers by reason of the interstate rates now in effect. Elsewhere we discuss this matter in greater detail.

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8. We call attention, in support of this requested finding of fact, to the testimony on behalf of the Grasselli Chemical Company, Inland Steel Company, Standard Oil Company, Interlake Iron Corporation, The Barrett Company and other shippers of large volume of traffic in the Chicago switching district, referred to in greater detail at page 24 *et seq.* hereof. There can be no question but that important tonnage has continued to move by rail in the Chicago switching district because of the hope on the part of such shippers that rates would not be increased as a result of the final decision in this case and that, pending such decision, the shippers have paid more than it would have cost to move their commodities by truck, by water or by pipe line. When the permanent adjustment has been determined it is certain that the carriers will find that docks and shipping platforms of industries in the Chicago district will be redesigned and reconstructed to permit the economical handling by truck, by water, by plant facilities and/or by pipe line and that as a result thereof there will be an increase in the tonnage diverted from rail transportation to these competing forms of transportation that will far more than offset the increase in rate on such traffic as is retained on the rails.

9. We regard the statement of fact in this paragraph as very important because it shows the extent to which there is no comparable service 1-line by many of the respondents with 1-line haul interstate in the district.

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The Santa Fe, for example, does not reach Indiana, it cannot perform any 1-line interstate switching service within the Chicago switching district and applies no contemporaneous 1-line interstate rate. There is, therefore, no possible discrimination, so far as this carrier is concerned, in its 1-line haul rates intrastate Illinois against 1-line interstate commerce, of which it has none.

The Baltimore and Ohio is listed in this paragraph of the petition as one of the carriers performing no 1-line switching service in interstate commerce; any movement between industries on the B. & O. in Illinois and industries on the B. & O. in Indiana is in part performed by the B. & O. Chicago Terminal and becomes a 2-line haul. We ask the most careful consideration by the Commission of the point we are here raising, that is, that there is no possible discrimination against 1-line interstate commerce of the carriers named by reason of the publication of rates on intrastate traffic for 1-line haul in the case of all of those railroads that perform no interstate service. How can the Chicago Junction Railway, for example, unjustly discriminate against interstate commerce by maintaining the 1-line intrastate rate of 2.5 cents for an average haul of 1.6 miles, when it applies no 1-line interstate rate and performs no service whatever in 1-line haul of interstate traffic on its rails? The average haul, 1-line interstate traffic of the cost study cars was 15 miles. The Commission cannot possibly find that the maintenance of a rate of 2.5 cents for an aver-

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age haul by the Chicago Junction of 1.6 miles unjustly discriminates against 1-line haul interstate commerce when the Chicago Junction performs no 1-line haul on

interstate commerce and when the average for other carriers for 1-line interstate haul is 15 miles.

It may be that the Commission did not intend that there should be any change in the intrastate 1-line rate of carriers in Illinois and in Indiana when such carriers perform no 1-line switching service interstate. That is indicated by the statement in the sentence at the bottom of Sheet 43 and the top of Sheet 44 where, in giving the reasons why the Commission is

> "not convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic are applied thereto."

the Commission points out, "a very large proportion of the intrastate traffic is handled in 1-line movements." This language may very properly be assumed to refer to the fact that a large proportion of the intrastate traffic is exempt from the Commission's order because it is handled in 1-line movement by the carriers set forth in this paragraph of the petition as performing no 1-line switching service in interstate commerce, their 1-line haul being wholly an intrastate movement not required or even subject to a requirement of an increase in rate to the 1-line interstate basis of other carriers.

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The Commission's report should clearly show that the order does not require any change in the 1-line intrastate rate of carriers not performing 1-line interstate service.

10. Heretofore on page 48 *et seq.*, we have set forth the extent to which the record discloses that there is a large number of commodities moving 1-line intrastate in Illinois and 1-line intrastate in Indiana that are not

shown to be moving 1-line interstate. The Commission cannot indict the rates on any commodity moving intrastate when there is no movement of such commodity interstate on a comparable haul by finding unjust discrimination against interstate commerce in general.

The carriers, either with or without the support of a large portion of the shippers, cannot publish an all-commodity basis of freight rates in such form as to preclude the consideration of the rate upon the commodity transported in the unit of freight car service, which is the carload. Each commodity is entitled to be considered by itself and not to be subjected to a basis of rates which might be reasonable or unobjectionable on other commodities.

We therefore insist that the rates under consideration in this case must be weighed by the circumstances and conditions surrounding the application thereof to the movement of the particular commodity. Since there are many commodities moving intrastate in Illinois and intrastate in Indiana that do not move interstate between

Illinois and Indiana points in the switching district, the Commission cannot make a finding of unjust discrimination in rates on such commodities. The record discloses a large number of such commodities; therefore the Commission's order must be modified to give appropriate effect to the facts of record in this respect.

11. The record discloses, as we have elsewhere pointed out, that there are a number of commodities moving interstate in the Chicago switching district over the lines of the respondents which do not move either intrastate in Indiana or intrastate in Illinois. In such cases, there being no movement of such commodities intrastate, there

is no discrimination against the interstate commerce. The like character of commodities intrastate and interstate which is necessary to constitute unjust discrimination is lacking. The Commission should give appropriate effect to the facts of record by proper findings in this respect.

12. There is no testimony with relation to revenue on switching traffic by individual carriers other than that shown for September, 1926, and for certain lines and certain traffic for November, 1931, and January, 1932. There is no complete showing for any or all of the carriers as to revenue that has been derived on intrastate traffic in Illinois, separately stated for each of the 1-line, 2-line, or 3-or-more-line hauls. Similarly, evidence is lacking as to the revenue under rates which were found not unreasonable for application on interstate traffic. Without

such a finding as to revenue, the Commission cannot make a finding that revenues of the carriers in Illinois will be increased by advancing the intrastate rate to the interstate basis.

13. What was said in paragraph 12 as to Illinois interstate traffic should be considered, in this paragraph, as applicable to Indiana intrastate traffic.

14. Elsewhere (see pages 19 to 41) we have analyzed the evidence of record showing that to increase the intrastate rates to the level prescribed for interstate rates will reduce the volume of business and the revenue derived therefrom below the amount now received for the transportation for intrastate traffic on the rates now in effect. The present rates, interstate and intrastate, are higher than the traffic will bear and have driven busi-

ness from the rails to competing forms of transportation.

15. The record shows that those carriers in the district which are engaged exclusively in switching service are in a relatively satisfactory condition. Exhibit number 120, page 24, shows the relation of net railway operating income to investment value of property owned and used by the Baltimore and Ohio Chicago Terminal Railroad Company, Belt Railway, Indiana Harbor Belt, Chicago River and Indiana-Chicago Junction, Chicago and Illinois Western, Chicago Short Line, Chicago, West Pullman and Southern, Illinois Northern, and Pullman Railroad Companies, being nine of the respondents en-

gaged solely in switching operations. For the average of seven years ended December 7, 1931, the rate of return for the nine railroads treated as a single system was 6.26 and for 1931 alone was 4.48, based on the investment value of the property owned and used. Using the I. C. C. valuation as of December 31, 1926, and giving effect to changes therein, the average rate of the annual return for the seven years ending December 31, 1931, was 7.89, and the rate of return for 1931 was 5.66. The I. C. C. valuation to date as of December 31, 1931, was 79.32 per cent of the investment in road and equipment as of December 31, 1931.

Here we have the roads engaged exclusively in switching service showing a most prosperous condition. It therefore is not possible on the record to find that the rates of the respondents on intrastate traffic unjustly discriminate against the interstate commerce of such carriers.

16. In brief and at oral argument heretofore, we have

set forth our objections to the cost study presented by the respondents and the reasons why that cost study affords no basis for finding as to the reasonableness of any rates of the respondents. We shall not here reargue the question involved.

17. In the former decision herein by this Commission, 177 I. C. C., page 687, the Commission found that if full effect were given to the modification in the cost study submitted by both carriers and shippers, the net change

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in the originally submitted costs would be decreases of 2.2 mills per hundred pounds for the average 1-line haul of 13.19 miles, 2.2 mills for the average 2-line haul of 21.32 miles, and an increase of 0.3 mill per hundred pounds for the average 3-line haul of 26.53 miles.

On 1-line traffic, switching cost is 1.63 cents as shown on page 43 of our brief of July 29, 1932; a rate of 2.5c for a 1-line haul gives an operating ratio of 65.2 on such costs. A 2.5c rate for a 2-line haul with costs of 2.03c produces an operating ratio of 81.2. The 3-line rate of 3c with an operating cost of 2.55c produces an operating ratio of 85. These are the operating ratios without considering the 10 per cent increase in the infrastate rates; the operating ratio of the rates as increased 10 per cent to costs named is 59.3, 73.8 and 77.3 for the respective hauls. Without question the 1-line rate contributes much more than its fair proportionate share of the revenues of each of the respondents. The same is true of the 2-line and 3-line rates when full consideration is given to the high operating ratio at the present time of all carriers throughout the country.

18. The record is bare of evidence to support a finding that present intrastate rates fail to produce their

fair proportionate share of revenue which the commodities transported under such rates should yield to *each* of the respondents. We have already pointed out that the respondents upon whom the burden to prove that present intrastate rates do not yield their fair share of the rev-

enue, have rested their case primarily on the cost study about which we have registered so much complaint. Accepting that cost study with the modifications which the Commission made to give effect to suggestions of both shippers and carriers, as stated in paragraph 17 hereof, shows an operating ratio quite favorable when compared with the operating ratios of carriers throughout the country.

19. The proposed report of Examiners Faul and Wilbur correctly summarized the facts of record in recommending that the Commission find that the maintenance of intrastate rates on a lower basis than the interstate rates

> "has not been shown to result in unjust discrimination against interstate commerce."

Both examiners heard all the evidence presented in the various hearings in these cases. They had opportunity to see the witnesses and they thoroughly understand all of the facts in connection with the case. Their judgment on the matter is entitled to greater weight than the Commission's report accords. They point out that the record does not contain convincing nor adequate proof that an increase in the intrastate rates to the interstate basis would result in an increase in total revenue as there are present other factors such as competitive movement by barges, pipe lines and trucks which would tend to decrease the volume of traffic sufficiently to offset any ad-

ditional revenue which otherwise might be gained by an increase in the rates.

The Commission does not in its report point out any facts of record which support its conclusion, so contrary to that reached in the report of the Examiners. In a matter so important as the present, where the authority and power of the state authorities are stricken down by a mere conclusion in the garb of a finding, it would seem desirable, at least, that the Commission should set forth in considerable detail the facts of record which lead it to the conclusion that the intrastate rates unjustly discriminate against interstate commerce.

20. Elsewhere we have pointed out the evidence in the record which without conflict shows that the respondents will have a smaller income if the intrastate rates be increased to the level of the interstate rates, due primarily to the fact that the tonnage now moving by rail on the intrastate rates will be diverted to trucks, water, or pipe line, and we shall not here restate those facts.

The Barrett Company, Inland Steel Company, the Standard Oil Company, the Interlake Iron Corporation, the Youngstown Sheet and Tube Company, the Grasselli Chemical Company and other representative shippers, through their representatives, testified that conveyors, pipe lines, hired trucks and company-owned trucks, as well as barge equipment, would be furnished to move their products where now the movement is by rail. To

all these means of transportation, traffic now moving by rail will be diverted with consequent loss, not increase, in revenue of the rail carriers.

21. The Commission in its report follows the recommendation of the Examiners in the finding that no undue preference or advantage to persons or localities in interstate commerce, or any undue preference or advantage to persons or localities in intrastate commerce will result from the maintenance of lower rates on intrastate commerce than on interstate commerce. The record abundantly supports that finding, but we are at a loss to reconcile a finding that while no undue prejudice and disadvantage results to persons or localities engaged in interstate commerce from the difference in rates, with the finding that the commerce itself in which the persons and localities are engaged, is subjected to undue discrimination by the same adjustment or relations in rates on intrastate and interstate commerce, that is expressly found to be free from offense against the persons engaged in interstate commerce and the localities where such persons are engaged in interstate commerce.

22. Elsewhere in this brief (see pages 42, 48 *et seq.*), we have shown that the facts necessary to show unjust discrimination against interstate commerce are not shown to be present in this record; the rates on Illinois intrastate and Indiana intrastate traffic are for a different service from that in interstate traffic, apply on commodities not transported under similar circumstances and con-

ditions in interstate commerce, and the rates are applied on intrastate traffic in many cases where there is no comparable interstate rate applied by the respondent publishing the intrastate rate. No violation of law exists in such cases and the Commission is without power to make the order complained of herein.

III.

IN PART 3 OF THE PETITION, REQUEST IS MADE THAT THE COMMISSION REOPEN THE PROCEEDINGS, VACATE ITS ORDER AND SET THE CASE FOR FURTHER HEARING. PETITIONERS BELIEVE THAT CONDITIONS HAVE CHANGED IN IMPORTANT RESPECTS TO SUCH A DEGREE THAT THE CONDITIONS AT THE PRESENT TIME SHOULD BE MADE A PART OF THE RECORD.

We would particularly call the Commission's attention to the following two matters:

During the next year 5,000 cars of oil will be transported, intrastate, 1-line in Illinois. The present rate is 2c plus 10 per cent, producing a minimum earning per car of approximately $16.50. The total earnings will exceed $80,000 on this traffic if it moves all-rail. The consignor and consignee of this particular movement have definitely reached the conclusion that if the rate be increased to the interstate basis, they will resort to other means of transportation with the resulting loss of revenue to the rail carriers.

Since the hearing closed, shippers of pig iron between South Chicago and Indiana Harbor have changed from

rail to water for the entire interstate movement. The present rate is 3.5c for the interstate 2-line movement. Prior to the increase from 2.5c the movement was all rail. These and other facts showing loss in rail revenue will, if the case be assigned for further hearing, be made a matter of record by proper testimony.

Another matter which we desire to present at the further hearing is a comparison of the revenue which the respondents receive out of interstate line-haul rates where the earning of the Chicago carriers for their part

of the hauls, as divisions of the through rate, are no greater than, and in some cases less than, the switching charges found reasonable by this Commission for the movement entirely within the Chicago switching district. For example, the Chicago and Eastern Illinois and other carriers receive a division of not more than 70c per ton (3.5c per hundred pounds) on coal for the movement from the Ohio River to destinations in the Chicago switching district, and out of that division pay for such switching as may be required where the C. and E. I. does not with its own power reach the rails of the consignors.

This evidence should be made a part of the record to show that, measured by the compensation received for the service rendered on such interstate traffic, the present intrastate switching rate pays ample compensation, and instead of the relationship resulting in unjust discrimination against interstate commerce, there is a dis-

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crimination against intrastate commerce by reason of the lower earnings on interstate commerce for greater service.

IV.

In the concluding portion of the petition of which this brief is a part, we point out the need for making the report and order of the Commission more definite and concise. The order of the Commission requires the respondents "according as they participate in the transportation" to establish and maintain switching rates on an all-commodity basis in intrastate commerce in the Chicago switching district within Illinois and within Indiana,

> "which shall be not less than the rates contemporaneously applied by said carriers to the transpor-

tation by them of all commodities in interstate switching service between points in the Chicago switching district in the States of Illinois and Indiana."

In Paragraph 9 of Section II of the petition, we show that some 26 of the respondents do not apply any 1-line rates to the transportation by them of commodities in interstate switching service because those carriers do not perform any 1-line interstate switching service between points in the Chicago switching district in Illinois and Indiana.

Having in mind the purpose of the Commission to remove unjust discrimination against interstate com-

merce, it would seem clear that the order does not reach such carriers and does not constitute authority to them to raise the intrastate rate; the requirement to remove a discrimination which does not exist is void; since there is no interstate commerce 1-line, there is no commerce which could be the subject of discrimination. Moreover, we find confirmation in the view we here express in the statement on Sheets 43 and 44 of the report, where the Commission gives the reasons for not being convinced that any substantial proportion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the rates found reasonable for interstate traffic be applied to intrastate traffic. One of the reasons stated as convincing the Commission that there would be no substantial proportion of the traffic diverted, was that a very large proportion of the traffic intrastate is handled in 1-line movements, and it follows that if no increase in such rate be made there would be little likelihood of any diversion on account of the Commission's order which did not apply thereto.

We therefore ask the Commission to make it clear that no increase in the intrastate rate for 1-line movement in intrastate commerce may be made by any carrier which does not "apply" a 1-line interstate rate in the Chicago switching district. Inasmuch as each of the respondents is a party to 2-line and 3-or-more-line movements, both interstate and intrastate, there is no need for any clarification of the order so far as movements other than 1-line intrastate are concerned.

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In connection with what we have just said, we call attention to the position of the Chicago Junction-Chicago River and Indiana, as expressed by its counsel (Rec., 2559, 2561) to the effect that no increase was proposed in the $3.15 rate and $7.15 rate for 1-line movement within a particular district on the line of that carrier, although there would be an increase when the movement was between different districts on the rails of that carrier. In the first decision of this Commission herein, on page 697, the Commission discusses those rates and because of the nature of the movements most of which were purely interplant and

> *"all intrastate in character, over comparatively short hauls,"*

made no findings as to that particular traffic. We do not, however, in the report and order of July 3, 1933, find any exemption whatever of any particular movements, and we interpret the decision as intending to increase all intrastate rates in Illinois and Indiana, where the carriers contemporaneously maintain a 1-line rate on interstate traffic or jointly with other carriers also are a party to a 2-line or 3-or-more-line interstate rate.

It is our information that at a recent meeting of the

traffic representatives of the respondents in this case, the Chicago Junction-Chicago River and Indiana expressed the intention to make no increase in its intradistrict, 1-line intrastate rates. As to all other traffic it is the intention of the carriers without exception to raise the

intrastate rates to the level of the interstate basis approved by this Commission regardless of whether the individual carrier has a contemporaneous interstate rate in effect on its line. We know of no distinction which can possibly be drawn between a 1-line intrastate switching service, however short in character, performed by the Chicago Junction, and the same length of service performed by other respondents intrastate in Illinois and intrastate in Indiana.

The Commission must not overlook the fact that the so-called districts created by the Chicago Junction for its convenience in handling traffic on that line were set up by the Chicago Junction itself and are merely arbitrary districts made by that carrier without any direction by any regulatory authority. We have not observed anywhere in any of the reports and orders of this Commission any finding which authorized this treatment by a particular respondent of the rates it had in effect intrastate, depending upon whether those rates were short or long. It is important, we think, that the Commission make clear just what it means by its order in these respects.

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CONCLUSION.

It has always been our understanding that before an order of this Commission should be made the subject of judicial proceedings, this Commission should have its attention called to any errors or mistakes which it had made in its report or in its order. It is our firm conviction that this Commission, with its attention especially directed to the matters herein set forth, should set aside its order and correct its report to conform to the facts of record.

In *Railroad Commission of Wisconsin* v. *Chicago, Burlington and Quincy Railroad Company,* 257 U. S. 563, 591; 66 L. Ed. 371, 384, the court, holding that unified control of interstate and intrastate commerce by the Interstate Commerce Commission only extends to the maintaining of efficient regulation of interstate commerce under the paramount power of Congress, said:

> "It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce."

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To the same effect is the decision of the Supreme Court in *New York* v. *United States,* 257 U. S. 591, 66 L. Ed. 385.

The disparity in rates on intrastate traffic and interstate traffic in this case is not so substantial as to operate

as a real discrimination against, and obstruction to, interstate commerce, and when the extent of the disparity is considered along with reduction of volume of tonnage moving by rail that will follow the increase in the intrastate rates to the level of the interstate rates, the conclusion should be reached that there is no violation of the Interstate Commerce Act due to the relation between the intrastate and interstate switching rates.

Laying aside the important presumption which attaches to the validity of the action of state authorities in regulation of rates, and considering only the testimony of record, there is no possibility of a valid finding by the Commission that the increase in rates on intrastate traffic to the interstate level will increase the revenue of the carriers.

Decisions of the Supreme Court and previous decisions of this Commission in other cases, clearly indicate that before the Commission can make an order such as that of July 3, 1933, in this case, it must make detailed findings and these findings must be based on testimony of record. The report and order of the Commission are contrary to the uncontradicted testimony of record.

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The order of July 3, 1933, should be vacated, the report modified, and the investigation discontinued.

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION,
B. F. LINDHEIMER, *Chairman,*
CHARLES E. BYRNE,
ANDREW OLSON,
ERNEST J. KRUETGEN,
Commissioners.

By IRVIN ROOKS,
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Centennial Building, Springfield,
Illinois.

PUBLIC SERVICE COMMISSION OF INDIANA,
PERRY MCCART, *Chairman,*
MOIE COOK,
S. L. TRABUE,
Commissioners, Public Service Commission of Indiana.

PHILIP LUTZ, JR.,
Attorney General of Indiana.

By G. W. HUFSMITH,
Assistant Attorney General of the State of Indiana,
Attorneys for Public Service Commission of Indiana.
State Capital Building, Indianapolis, Indiana.

BOARD OF TRADE OF THE CITY OF CHICAGO,
By HERBERT J. CAMPBELL,
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105 S. La Salle Street, Chicago, Illinois.

ACME STEEL COMPANY, *et al.,*
(Complainants, Docket 24950),
By LUTHER M. WALTER,
JOHN S. BURCHMORE,
NUEL D. BELNAP, *Attorneys.*

WALTER, BURCHMORE & BELNAP,
1522 First National Bank Building,
Chicago, Illinois.

August, 15, 1933.

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CERTIFICATE OF SERVICE.

I do hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each party of record.

Dated at Chicago, Ill., this 15th day of August, 1933.

LUTHER M. WALTER.

APPENDIX E.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT.	Docket No. 19610.

ANSWER ON BEHALF OF RESPONDENT CARRIERS TO PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, AND THE ACME STEEL COMPANY, ET AL., FOR REOPENING; FURTHER HEARING; SETTING ASIDE OF ORDER OF JULY 3, 1933; REARGUMENT AND RECONSIDERATION.

H. I. ALLEN,
J. R. BARSE,
D. P. CONNELL,
P. F. GAULT,
JAMES STILLWELL,
H. D. SHEEAN,
E. A. SMITH,
J. N. DAVIS,
Attorneys for Respondents.

CHICAGO, ILLINOIS,
August 24, 1933.

BEFORE THE

INTERSTATE COMMERCE COMMISSION

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT.	Docket No. 19610.

ANSWER ON BEHALF OF RESPONDENT CARRIERS TO PETITION OF ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF INDIANA, AND THE ACME STEEL COMPANY, ET AL., FOR REOPENING; FURTHER HEARING; SETTING ASIDE OF ORDER OF JULY 3, 1933; REARGUMENT AND RECONSIDERATION.

Now come the carriers operating in the Chicago Switching District, respondents in the above entitled docket, and in answer to petition of the Illinois Commerce Commission, the Public Service Commission of Indiana, Acme Steel Company, *et al.* (complainants in Docket 24950), Board of Trade of the City of Chicago (intervener herein) for reopening, for further hearing, for setting aside of order of July 3, 1933, for reargument and/or reconsideration, say that said petition should be denied.

The carriers point out that prior to the inception of Docket 19610, the carriers, the Chicago Shippers' Conference Association, the Chicago Association of Com-

merce, and individual industries and shippers in the Chicago Switching District, had several conferences in determining what rates should be established within the

Chicago Switching District in keeping with the report and order of this Commission in Docket No. 15110, *Jones & Laughlin Steel Corporation* v. *B. & O. R. R. et al.* 96 I. C. C. 682, decided June 15, 1925. As a result of these several conferences—at which conferences this Commission had representatives present—a uniform basis of rates applicable to all commodities was tentatively agreed upon, and the carriers published in tariff form, rates of 3 cents, 3½ cents and 4 cents per 100 pounds, for one, two and three-or-more line hauls respectively, minimum 60,000 pounds. These rates were suspended (I. & S. Docket 2900) and, due to the fact that in an Investigation and Suspension proceeding the power and authority of this Commission is limited, on May 11, 1927, this Commission, on its own motion, entered upon an inquiry and investigation into and concerning the lawfulness of all rates and charges for switching within the Chicago Switching District, on all carload freight moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful, switching rates for said traffic as the facts and circumstances warranted. This investigation was given Docket No. 19610. In initiating this investigation concerning the lawfulness of the switching rates in the Chicago Switch-

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ing District, this Commission gave proper notice to the state authorities of both Illinois and Indiana, and like notice was given to the carriers and the shippers; numerous hearings were had; the lawfulness of the switching rates in the Chicago Switching District was thoroughly investigated and all parties of interest were given full and ample opportunity to present their views, in oral

hearings, written briefs, and oral argument. At the hearing in Docket 19610 concerning the matters that prompted the Commission, on its own motion, to investigate the lawfulness of the switching rates in the Chicago Switching District under Docket 19610, the Chicago Shippers' Conference Association and the Chicago Association of Commerce, among others, appeared and testified. At these hearings, and at all subsequent hearings, and on brief and in oral argument, not a single party of record, at any time, contended for, or advocated, a different all-commodity basis of rates to apply within the Chicago Switching District, on state traffic, than at the same time applied on interstate. The principal contention by the Chicago Association of Commerce and the Chicago Shippers' Conference Association was that there should be an all-commodity basis of rates within the District for application alike on state and interstate traffic; a similar position was taken by all other interested parties. The major, and perhaps the sole, difference between the carriers on the one hand and the shippers and state commissions on the other, was the measure of the rates and this has been the issue through-

out the entire proceeding, and as late as the oral argument, in April, 1933, counsel for the state commissions, and for certain shippers, contended for uniform rates within the District for both state and interstate application. The shippers that testified at the last hearings in Dockets 19610 and 24950 suggested rates that were lower than those found reasonable by this Commission in its order of July 31, 1931 (177 I. C. C. 669), but such suggested rates were the same for state and interstate application.

It is clear from the record in this case (Docket 19610) and it is likewise clear from the record in Docket 24950, that the sole and only objection that the two state commissions and the individual shippers who took part in the subsequent hearings in Docket 19610 and Docket 24950, have, is to the measure of the rates, and the petition to which this is an answer, is predicated entirely upon the measure of the rate. In other words, if this Commission had been governed by the Illinois Commerce Commission and the Public Service Commission of Indiana and had adopted the state rates as the measure of reasonableness for interstate rates, then this petition for further hearing, etc., would never have been filed.

There is nothing new or different in the petitioners' assertions that this Commission's order is void, or that the Commission has committed error in its findings or its failure to make certain findings, than what has been presented by these same petitioners in briefs, exceptions to

proposed reports, motions for reconsideration and rehearing, petitions to have tariffs suspended, etc., that have been filed by these same petitioners at some stage of the proceeding in Docket 19610. We will endeavor to answer briefly and comment upon each of the assertions set forth in the petition.

The petitioners, on page 2 of the petition, set forth three grounds as a basis for their assertion that the Commission's decision and order of July 3, 1933, is void. The first assertion is that there is "no evidence in support" of the order. The testimony and exhibits received of record in the original hearing in Docket 19610 and in the subsequent hearing in the same docket contain ample and sufficient evidence to sustain the Commission's order in all respects.

The petitioners contend that the order is void because "no proper findings in support thereof have been made by the Commission." The findings set forth in said report are sufficient and ample under the decisions of the Supreme Court of the United States to support the order of the Commission. Petitioners cite no authority for their assertion, nor do they point out wherein as a matter of law the findings are improper or not in keeping with the law.

The petitioners allege that this Commission committed error in its decision and order of July 3, 1933, in finding that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana, be-

tween points within the Chicago Switching District, on a lower basis than the corresponding all-commodity rates and minimum weights found not unreasonable for switching service on interstate transportation results, and will for the future result, in unjust discrimination against interstate commerce.

The record shows that in normal times by reason of the lower state rates within the Chicago Switching District the interested carriers would be deprived of practically three million dollars per annum and that in abnormal times such as in 1931 and 1932, the carriers would be deprived of practically one million dollars per annum. The record shows that by reason of the lower state rates, shippers were routing their traffic so as to take advantage of the lower state rates, which caused a substantial loss in revenue to the carriers; in addition, in order to transport such traffic so as to make applicable the lower state rates, considerable additional expense is incurred.

The record in this case is replete with other evidence

showing the unjust discrimination against interstate commerce by reason of the lower state rates within the District. The petitioners further contend that the record is convincing that the carriers will be deprived of a substantial increase in revenue if the intrastate rates are increased to the level of the interstate rates, and that a substantial portion of the traffic now moving by rail intrastate will be diverted to other forms of transportation if the unjust discrimination against interstate commerce

is removed by increasing the state rates to the level of the interstate rates. There is no substantial evidence in this record to bear out or confirm the allegations of the petition. There was but a small number of shippers who testified in the subsequent hearing in Docket 19610 and in Docket 24950, and these shippers represented but a few of the commodities that moved within the Chicago Switching District.

The exhibits introduced by the carriers and the traffic test that was conducted at the request of this Commission shows that there are sixty-nine or more commodity groups and a great number of these groups contain as a general proposition more than one commodity. The evidence of record does not show that there is any movement, or threat of movement, of a majority of the 69 commodity groups, by other means of transportation if the state rate should be increased. There were only a few commodities of the sixty-nine commodity groups that were affected by other forms of transportation, either real or threatened, and it cannot be said either in truth or in fact that any substantial portion of the traffic now moving by rail will be diverted to trucks or other forms of transportation. On the contrary, the evidence is con-

vincing that no substantial portion of the traffic now moving by rail will seek other forms of transportation. The evidence was uncontradicted that the actual cost of performing trucking service was greater than the rates prescribed by this Commission (Rec. 3195-99) and, therefore, only in what might be termed "isolated cases"

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where the service is more convenient by truck, such as in the case of shipments of common brick, would any traffic be diverted from the railroads by reason of the application of the rates herein prescribed.

On pages 3 to 10 of the petition some twenty-two alleged errors are stated, it being claimed that the Commission failed to find that certain contentions of the petitioners were supported by the evidence.

The petitioners claim that the Commission erred in failing to find that the switching service on intrastate traffic in the Chicago Switching District, in Illinois and in Indiana, is substantially less than that performed on interstate traffic, and that lower state rates are justified by reason of the difference in transportation service. The evidence of record does not support this contention of petitioners. The record shows that in performing switching, if a one-line haul, there are two switches, one at the beginning and one at the end; on a two-line haul there are three switches, one at point of origin, one at destination, and one intermediate or interchange switch; that the expense involved in handling the business within the Chicago Switching District is in switching. That the transportation between the two switches for the single-line haul or the three switches for the two-line haul, is but a minor part of the cost of performing the service, and distance as such, has little, if any, bearing

upon the cost of service performed. Yet the petitioners throughout the entire hearing in briefs, in oral argu-

ment, and in this petition, stress no other point than distance for single-line, two-line and three-or-more line hauls, state *versus* interstate. The distance stressed by petitioners is the average distance and not the actual. The District as a whole was considered as a unit by the consent of all interested parties and by the consent of all interested parties there was to be but one commodity rate to apply alike on all traffic for single line, two-line and three-or-more-line hauls respectively. The switching at point of origin and at destination, within the district, and the interchange switching, the record shows, is identical whether it be state or interstate transportation involved. That distance is not substantial or controlling and therefore there is no foundation in this record for the assertion by petitioners that there is a "substantial difference in the service performed" state *versus* interstate.

The petitioners further assert that the intrastate rates charged for switching service in the Chicago Switching District, within Illinois and Indiana, are not less than just and reasonable rates. The evidence of record shows that the lower state rates within the District result, and will for the future result, in unjust discrimination against interstate commerce. The record further shows that if the lower level of intrastate rates is to be maintained, it will discriminate against interstate commerce in a very substantial way. Based upon a normal year, the record shows that the revenues of the carriers would be depleted by approximately $3,000,000 per annum (Ex.

99-A) and in abnormal times, such as the years 1931 and 1932, the revenues of the carriers would be depleted by approximately $1,000,000 per annum. (Ex. 101-A, Ex. 103-A.) And as pointed out by the Supreme Court of the United States in the case of *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R.*, 257 U. S. 563, and in *New York* v. *United States*, 257 U. S. 591, the Commission is well within its authority in raising the state rates as it has ordered done in the instant case.

Paragraphs 7 and 8 on page 4 of said petition are reiterations of contentions made during hearings, on brief, and in oral arguments. There are 69 or more commodity groups of traffic that move within the District and in a majority of instances the commodity group contains more than one commodity; and with regard to a majority of these 69 commodity groups there is no evidence in this record that there is any movement by other forms of transportation, nor is there any intent or threat by the shippers to so move their commodities. The evidence is confined to a very few shippers and the evidence of record shows that an increase in the state rates within the District will yield a substantial return in revenue to the interested carriers.

In paragraph 9 on pages 4, 5 and 6 of said petition, petitioners point out that there are a number of carriers serving the Chicago Switching District whose single-line movement would not cross the Illinois-Indiana state line. This is no new fact and is one that was obvious

from the initiation of the Commission's investigation in Docket 19610, and such fact is not in any way dissimilar to the facts considered in the Railroad Commission of Wisconsin case, *supra*, and the New York case,

supra, and other cases in which a state-wide basis of rates was under consideration. Petitioners overlook the fact that by the consent of all interested parties the Chicago Switching District was considered as a unit and that it was the consent of all participating parties that there should be but one all-commodity rate for single line, two-line, and three-or-more-line hauls respectively, throughout the District. As heretofore pointed out, the only contention on which there was any disagreement was the measure of the rate. No one on this record has at any time advocated and insisted upon a diffrent all-commodity basis of rates for state than at the same time applies on interstate traffic within the Chicago Switching District.

In paragraph 10, on page 7, of said petition it is alleged that there is a large number of commodities moving in one-line intrastate movements (Illinois or Indiana) that are not moving in one-line interstate movements within the Chicago Switching District. This is not a fact as the record amply demonstrates. A number of exhibits were introduced, including the traffic test, which show the different commodities that moved under the 69 commodity groups within the Chicago Switching District, and as was pointed out in the respondents' brief in the last hearing in Docket 19610, a study of these

exhibits (Ex. 101-A, Ex. 102, Ex. 103-A, Ex. 104, Ex. 105-A, Ex. 106) will show that the same kind of commodity that moves intrastate within the District, either in Indiana or Illinois, likewise moves interstate, and the reverse of this is also true. It is common knowledge, and the record shows, that on the Indiana side of the District there are large steel mills, oil refineries, and other industries, and likewise on the Illinois side of the Chi-

cago Switching District are similar industries. (Rec., 2707-8; Rec., 2776-7.) The record does not bear out the assertions of the petitioners.

In paragraph 11, on page 7 of the petition, the same contention is made as in paragraph 10—the latter paragraph deals with Illinois and paragraph 11 deals with Indiana—and the same answer as above given to paragraph 10 applies equally to paragraph 11.

In paragraph 12, on page 7 of the petition, it is alleged that the record does not disclose the revenue separately for each of the respondents, that is derived from Illinois intrastate traffic, and separately state it for one-line, two-line, and three-or-more-line hauls. The record does disclose the revenue which these respondents would be deprived of if the state rates were not brought up to the level of the interstate rates. Whether this information is shown for the individual lines or for the lines collectively, is of no significance.

This same answer applies to paragraph 13 on page 7 of the petition.

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In paragraph 14, page 7 of the petition, the petitioners allege that the record shows that to increase the state rates within the Chicago Switching District will reduce the volume of business handled and the revenue derived therefrom; on the contrary, the record shows the reverse. The volume of business will not be reduced and the revenue derived by an increase of the state rates to the interstate basis will augment the revenues of respondents.

In paragraph 15, page 8 of the petition, it is alleged that the revenues of respondents on intrastate switching in the Chicago Switching District are ample to maintain an adequate transportation service. The evidence

of record, however, shows that the rates within the Chicago Switching District, before the Commission's order of July 31, 1931, which at that time were the same as the present state rates, were below a reasonable rate; therefore, there is no foundation, either in theory or in fact, for the assertion of paragraph 15.

Paragraphs 16 and 17, on pages 8 and 9 of the petition are assertions that have been repeatedly urged by these same petitioners, in brief, exceptions to proposed reports, and oral arguments, and are a repetition of the criticism of the cost study.

In paragraph 18, page 9, petitioners allege that there is no evidence in the record to show that the present intrastate rates fail to produce their fair proportionate share of revenue. The record shows very fully that the

state rates within the Chicago Switching District do not produce their fair proportionate share of revenue.

In paragraph 19 on page 9 of the petition, petitioners allege that there is no evidence in the record to show that the intrastate rates now in effect within the Chicago Switching District constitute an unjust discrimination against interstate commerce. The record is complete in showing that the intrastate rates are a direct burden upon interstate commerce and that such intrastate rates cause an unjust discrimination against interstate commerce, and in addition the record also shows that the intrastate rates obstruct and block interstate commerce, and furthermore, by reason of the low state rates, the record shows that such a condition substantially and unreasonably impairs the usefulness of railroad facilities. The record shows that in order to handle the great volume of business in the congested area known as the Chicago Switching District, facilities for the handling

of such business have been provided, and a normal, logical, and customary way of handling such traffic to the best interest of the shipping public and the carriers has been provided, but by reason of the lower state rates, the record shows shippers have imposed upon the carriers routing of their traffic so as to protect the state rates (Ex. 110, Rec., 2181) and thereby cause additional and expensive service on the part of the carriers that is wholly unnecessary and a burden upon the carriers.

In paragraph 20, page 9 of the petition, petitioners allege that there is no evidence of record upon which the

Commission can find that the respondents will have a greater income by increasing the state rates to the level of the interstate rates. Quite to the contrary, the evidence shows that if the state rates within the Chicago Switching District are placed on the level of the basis found reasonable by the Interstate Commerce Commission for application within the District, the carriers' revenues will be augmented, in normal times over three million dollars a year, and even in depressed times, over one million a year.

Paragraphs 21 and 22, appearing on pages 9 and 10 of the petition have been fully answered by the decisions of the Supreme Court of the United States. In those decisions in which the paramount authority of this Commission in dealing with state rates has been considered. A few of the cases are: *Railroad Commission of Wisconsin* v. *C. B. & Q. R. R.*, 257 U. S. 563; *New York* v. *United States*, 257 U. S. 591; *The Shreveport Case*, 234 U. S. 342; *Georgia Public Service Commission* v. *United States*, 283 U. S. 765; *Florida et al.* v. *United States*, 282 U. S. 194; *Alabama et al.* v. *United States*, 283 U. S. 776.

The argument made by petitioners in support of their various contentions disregards the essential and controlling facts of record; goes outside of the record in stating facts that are not of record, nor actually exist; and misconstrues and misapplies the law applicable from the facts of record.

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On page 12 of the petition, it is contended by petitioners that there has been a substantial change since the testimony was submitted in May, 1932. The record, when it closed, showed that the changed conditions contended by petitioners during the hearing resulted in increased cost (Ex. 107, Ex. 109, Rec., 3111) of operation because of the fact that unit costs could not be reduced in proportion to the falling-off of traffic. Since the close of the hearing there has been at least two decisions of the Supreme Court of the United States sustaining legislation relative to the regulation of trucks (*Continental Baking Co.* v. *Woodring*, 286 U. S. 352; *Sproles* v. *Binford*, 286 U. S. 374). It is common knowledge that Congress has and will consider seriously the federal regulation of trucks, all of which can result in nothing more than higher transportation costs and therefore higher rates, and the record, as before stated, shows that the present costs, when this record closed, for truck transportation, was higher than the rates prescribed as reasonable rates by this Commission for switching within the Chicago Switching District.

On page 13 of the petition, it is intimated that there is some doubt on the part of some of the respondents as to whether or not they are required to increase their intrastate, one-line haul rate in Indiana, also in Illinois, the tariffs that have been filed in compliance with the Commission's order of July 3, 1933, will show that there

is no confusion or doubt as to the requirements of the Commission's order here under consideration.

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In the argument, on page 73, reference is made in regard to the intra-district movements on the line of the Chicago Junction Railroad. An answer to said petition in this regard is sufficient, we believe by reference to what the Commission said on this same subject in its decision of July 31, 1931, reported in 177 I. C. C. 669, at page 697.

As stated at the beginning, this case from its inception was considered by all interested parties as establishing an all-commodity basis of rates to apply for one-line, two-line, and three-or-more-line hauls respectively throughout the entire District, state and interstate included, and at no time did any one interest or group of interests, contend otherwise. The sole question was one of the level of rates. It is to the interest of the Chicago Association of Commerce, the Chicago Shippers' Conference Association, and the general shipping public that the rates within the District should be the same for state and interstate, and this fact is not disputed in this record, but on the contrary, is admitted. The evidence of record shows, and it is uncontradicted, that all traffic, state and interstate, is handled in the same manner; that the service is in all material respects, the same. (Rec., 2199), (Rec., 2251), (Rec., 2403), (Rec., 2410 and 2404-5.) Since the inception of the Commission's investigation known as Docket 19610, May 11, 1927, there have been a number of hearings, and oral arguments, and all parties have had ample opportunity to appear and give evidence.

The rates in compliance with the Commission's order will become effective September 20, 1933, and we therefore urge that the petition be denied.

Respectfully submitted,

H. I. ALLEN,
J. R. BARSE,
D. P. CONNELL,
P. F. GAULT,
JAMES STILLWELL,
H. D. SHEEAN,
E. A. SMITH,
J. N. DAVIS,
Attorneys for Respondents.

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party of record.

DATED at Chicago, Illinois, this 24th day of August, 1933.

J. N. DAVIS,
516 W. Jackson Boulevard,
Chicago, Illinois.

APPENDIX F.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of September, A. D. 1933.

No. 19610.

SWITCHING RATES IN THE CHICAGO SWITCHING DISTRICT.

No. 24950.

ACME STEEL COMPANY, *et al.*,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,

Upon further consideration of the record in the above-entitled proceedings, and in order to afford opportunity for appropriate consideration of the petition of the Illinois Commerce Commission, Public Service Commission of Indiana, Acme Steel Company, and Board of Trade of the City of Chicago for reopening for further hearing, for setting aside of order of July 3, 1933, for reargument and reconsideration, and of petition of the South Chicago Coal & Dock Company for reopening, reconsideration, and setting aside of the order dated July 3, 1933:

It is ordered, That the effective date of the aforesaid order of July 3, 1933, in these proceedings, be, and it is hereby, postponed to October 20, 1933.

By the Commission.

(Seal)

GEORGE B. MCGINTY,
Secretary.

APPENDIX G.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the matter of the proposed changes in rates for the transportation of carload freight between points within the Chicago Switching District and also between points in the Chicago Switching District and points outside of the said district, resulting in advances and reductions stated in schedules filed by the Atchison, Topeka and Santa Fe Railway Company, et al	17250 1st Supplemental 2nd Supplemental 3rd Supplemental
In the matter of the proposed advances of rates on tile, brick and articles taking the same rates stated in schedules filed by the Baltimore and Ohio Chicago Terminal Railroad Company, et al	17269
Illinois Slag & Ballast Company vs. Chicago, West Pullman and Southern Railroad Company, et al	17513

ORDER

By the Commission:

Docket No. 17250: Schedules have been filed by Illinois carriers in which it is proposed to change rates for the transportation of freight between points within the Chicago Switching District and points outside of said district resulting in advances and reductions; and it is further pro-

posed in the aforesaid schedules that such changes in rates become effective April 30, 1927.

It appeared from an examination of the aforesaid schedules, that the Commission should enter upon a hearing concerning the propriety of the proposed changes in rates and that pending the hearing and the decision thereon, the said changes in rates should not go into effect.

On April 19, 1927, the Commission suspended the aforesaid proposed changes in rates until August 27, 1927, pending a hearing and decision thereon. The Commission's investigation of this matter had not been concluded prior to August 27, 1927, and therefore, the period of suspension

was further extended from time to time by order of the Commission and voluntary action of the carriers until February 1, 1932.

Docket 17269: Schedules have been filed by Illinois carriers in which it is proposed to advance the carload rates on tile, brick and articles taking the same rates between Chicago Heights, Illinois, and points in the Chicago Switching District; and it is further proposed in the said schedules that such advanced rates shall become effective May 5, 1927.

It appeared from an examination of the aforesaid schedules that the Commission should enter upon a hearing concerning the propriety of the proposed advances in rates and that pending the hearing and the decision thereon, the said advanced rates should not go into effect.

On April 27, 1927, the Commission suspended the aforesaid proposed advanced rates until September 2, 1927, pending a hearing and the decision thereon. The Commission's investigation of this matter had not been concluded prior to September 2, 1927, and the schedules were further

suspended from time to time by order of the Commission and voluntary action of the carriers until February 1, 1932.

Docket 17513: By complaint filed July 18, 1927, the Illinois Slag & Ballast Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with principal office at Chicago, Illinois, engaged in the crushing, shipment and sale of slag, alleges that the carload rates charged for the transportation of crushed slag from its plant in South Chicago, (Irondale), Illinois, to points in the Chicago Switching District are unjust and unreasonable. Reparation and reasonable rates for the future are sought.

A similar complaint was filed with the Interstate Commerce Commission attacking the interstate rates from South Chicago, (Irondale), Illinois, to points in the Chicago-Gary District.

Pursuant to notice as required by law, hearings were held in Chicago, January 11, May 15, 16, 17, 18, 19, 21 and 22, and September 18, 19, 20 and 21, 1928.

By agreement of all parties, Dockets 17250, 17269 and 17513 were consolidated and heard jointly with the Interstate Commerce Commission under its Docket 19610, and I. & S. Docket 2900, and the Public Service Commission of Indiana under its Docket 8939.

The appearances at the said hearings were as follows:

J. N. Davis, J. R. Barse, P. F. Gault, E. A. Smith, D. P. Connell, Guernsey Orcutt, H. I. Allen, H. D. Sheean, and Nelson Trottman for railroads serving the Chicago Switching District.

Sherman A. Gillett for Chicago and North Western Railway Company.

J. H. Brown for The Belt Railway Company of Chicago.

M. S. Connelly for Pennsylvania Railroad Company.

K. L. Richmond, J. F. Connors, and F. E. Webster for Chicago and Eastern Illinois Railway Company.

T. F. Dooley for the Chicago & Calumet River Railroad Company.

R. C. Davidson for The Chicago, Rock Island and Pacific Railway Company.

T. E. Bond for the Elgin, Joliet and Eastern Railway Company.

W. G. Wagner for the Chicago, Burlington & Quincy Railroad Company.

F. C. Furry for the Illinois Central Railroad Company and the Chicago & Illinois Western Railroad Company.

Guy A. Gladson for The Chicago and Alton Railroad Company (William W. Wheelock and William G. Bierd, Receivers).

B. S. Lottenville for the Chicago Heights Terminal Transfer Railroad Company.

C. W. Galligan for the Illinois Freight Association.

John F. Bonner for the Minnesota Railroad & Warehouse Commission.

W. A. Anderson for the Railroad Commission of Wisconsin.

D. L. Kelley for the South Dakota Board of Railroad Commissioners.

Claude L. Draper for the Public Service Commission, State of Wyoming.

Luther M. Walter and G. W. Oliver for the Chicago Shippers' Conference Association and the Association of Commerce.

R. B. Coapstick for the Indiana State Chamber of Commerce.

J. S. Brown, H. J. Campbell and S. H. Benson for the Board of Trade of the City of Chicago.

Frank B. Townsend and Lee Kuempel for the Minneapolis Traffic Association.

Fred S. Keiser for the Duluth Chamber of Commerce.

J. B. Humphrey for the Hammond Chamber of Commerce, the Hammond Manufacturing Association and others.

H. F. Sundberg for the Chamber of Commerce, Cedar Rapids, Iowa.

J. P. Haynes and A. H. Schwietert for the Chicago Association of Commerce.

R. I. Pierce for the Terre Haute Chamber of Commerce and the Highland Iron & Steel Company.

F. B. McElroy, C. B. Cardy and R. I. Pierce for the Manufacturers Association of Chicago Heights, Illinois.

L. G. Macomber for the Detroit Board of Commerce.

Ralph N. Newmann for the Lions Club of Des Plaines, Illinois.

Murray N. Billings for the Illinois Steel Company.

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Henry C. Keene for the Grasselli Chemical Company.

W. J. Hammond and R. R. Flynn for the Inland Steel Company.

W. Y. Wildman and R. W. Ropiequet for the Illinois Coal Traffic Bureau.

George Patterson Boyle for the Illinois Slag & Ballast Company.

Walter Hayes for Sears, Roebuck Company.

H. R. Park for the Chicago Livestock Exchange.

E. S. Gubernator, R. S. Waterbury and E. W. Glaesel for the Lehigh Portland Cement Company.

Robert J. McBride and Warren Burkhart for the Illinois Lumber & Material Dealers Association, the Burgess Battery Company, the Beloit Iron Works and the Jos. F. Herman Company.

J. D. Forrest and G. H. Staat for the By-Products Coke Corporation.

Robert Hula for Clayton Mark & Company.

W. M. O'Keefe for the Chicago Mercantile Exchange and the Live Poultry & Dairy Shippers Association.

Herman Mueller for the St. Paul Association of Public & Business Affairs.

C. B. Cardy and W. F. Gorman for the Manufacturers Association of Chicago and the Stone Producers in the Chicago Switching District.

E. L. Maynard for the Brownell Improvement Company, the Dolese Shepard Company, the Federal Stone Company, the A. C. O'Laughlin Company, the Peoples Crushed Stone Co. and the Superior Crushed Stone Company.

J. W. McRae for the Pennoyer Merchants Transfer Company.

W. F. Coyne and W. R. Sanborn for the Lehigh Stone Company.

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Quinn Morton for the C. L. Willey Company.

C. A. Shank for the National Brick Company.

W. M. Councill for the National Fireproofing Company.

H. H. Bascom for the Youngstown Sheet & Tube Company.

C. T. Stripp for the National Malleable & Steel Casting Company.

A. R. Miller and H. G. Brown for the Illinois Brick Company.

H. W. Robertson and H. H. Singer for the Sinclair Refining Company.

Burton H. Atwood and C. B. Ackerman for the Elmhurst Chicago Stone Company.

J. L. Roberts and N. L. Shannon for The Barrett Company.

Alfred S. Knowlton for the American Tar Products Company and the Chicago By-Product Coke Company.

Adam Bissolo, A. M. Cordell and Alfred S. Knowlton for the Standard Steel Car Company and subsidiaries.

T. W. Mackey for The Western Shade Cloth Company.

Fred C. Rose for the Marsh and Truman Lumber Company.

John D. Ross for the General Chemical Company.

F. D. Porter for S. Berkenstein Sons, Incorporated.

P. St. Pierre for A. L. Randall Company and Dure Paper Products Company.

L. E. Whitney for the National Pickle Packers Association.

F. W. Rogers for the Flintkote Company.

M. H. Strothman for the Washburn Crosby Company.

Sam Frier for the Wholesale Sash & Door Association.

E. C. Wilmore for the Sefton Manufacturing Company.

C. D. Miller for the American Maize Products Company.

E. F. Grubbs for Chapin & Company.

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M. S. Allison for the Federal Cement Tile Company.

A. L. Dreher for the Hyman-Michaels Company.

F. M. Garland and A. M. Cordell for the Pressed Steel Car Company.

M. D. Perry for the Union Drawn Steel Company, the Gary Screw & Bolt Company and the Pittsburgh Screw & Bolt Company.

R. D. Reeds and E. F. Pine for the Confectioners Traffic Association and E. J. Brach & Sons.

A. E. Huenergardt for the Confectioners Traffic Association and Zion Institutions & Industries.

R. E. Riley for the Chicago Brick Company, the Chicago Brick Exchange, the Lake Sand Corporation and the L. Richard Company.

F. H. Belden and E. S. Huebner for the Marblehead Lime Company.

F. D. Wilder for the Chicago Railway Equipment Company.

R. C. Livingston for the Interstate Iron & Steel Company.

The F. C. Favor Paper Company for the Chicago Paper Association.

J. H. Kane for the Material Service.

T. P. Scanlon for J. B. Inderreiden Company and the Amber Furniture Company.

H. N. Williams for the Jewel Tea Company.

J. T. Dover and W. J. Brown for the McClintic-Marshall Construction Company.

E. W. Sieboldt and J. R. Van Slyke for the Roxana Petroleum Corporation.

A. E. Sicilia for the Chicago Wool Trade Association.

P. A. McFarlane for the Wisconsin Lime & Cement Company.

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H. J. Meilahn for the J. J. Bradenoch Company.

H. F. Obermayer for the Stratton Grain Company and the Quincy Elevator Company.

W. J. M. Lahl for the American Seating Company.

A. A. Adams for the Chicago Retail Lumber Dealers Association and the Edward Hines Lumber Company.

Alfred E. Treen for the Illinois Slag & Ballast Company.

W. S. Short for the Seaman Paper Company and the H. P. Smith Paper Company.

S. A. Poyer for the Chicago Bridge & Iron Works.

Irwin W. Hart for the Franklin MacVeagh & Company.

F. R. Jerome for the Traffic Bureau of Associated Industries.

L. J. Thomas for the Johns-Manville Corporation.

Arthur W. Fredrickson for the Commonwealth Edison Company.

D. C. Norris for the Wolff Manufacturing Company.

Wm. Lister for the City of Evanston.

W. J. Womer for the Chicago District Ice Association and the Lincoln Boyle Ice Company.

John W. Bingham for the Corn Products Refining Company.

W. J. Rowley for the Albert Dickinson Company.

R. C. Ross for Jos. T. Ryerson & Son.

B. J. Klein for the Southern Cotton Oil Company.

Henry Hauseman for the Pure Oil Company.

J. A. Brough for the Crane Company.

R. E. Kasmar for the R. E. Conway Company.

J. L. Hodgson for American Sand & Gravel Company.

Walter E. McCornack, G. W. Renwick and William Forgner for the Chicago Gravel Company and the Chicago Stone Company.

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W. H. McReynolds for the Manitowoc Portland Cement Company.

F. S. Hollands and H. T. Zaremba for the Standard Oil Company of Indiana.

John J. McGovern for the American Linseed Company and the Best Foods Company.

John H. C. Kirk for Darling & Company.

F. B. McElroy for the Whiteacre Greer Fireproofing Company and the American Manganese Steel Company.

Leonard C. Reincke and David Dunn for the Wm. Wrigley Jr. Company.

M. A. Erickson for the Shotwell Manufacturing Company.

Fred Mueller for the Cracker Jack Company.

J. H. Matheson for The Columbia Mills, Inc.

H. S. Welton for the Victor Chemical Company.

E. D. Porter for the National Association Waste Materials, Inc.

B. J. Roggenbuck for the John F. Jelke Company and Geo. P. Brown Company.

B. H. Rubenstein and L. A. Boulger for The Ruberoid Company.

Charles W. Stadell and H. D. Pixley for Carson, Pirie, Scott & Company.

W. J. Buchanan for the Terminals & Transportation Corporation of Illinois.

Alexander Stuart for Rosenbaum Grain Corporation.

R. W. Campbell for the Butler Paper Corporation.

F. D. Hussian for Rathbone, Hair & Ridgway Company and the Shavings & Sawdust Corporation.

Charles A. Livingston for the Illinois Manufacturers Association.

W. D. Lindsay for the United States Gypsum Company.

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Anton J. Berger for the Construction Materials Company.

James B. O'Rear for the Acme Steel Company.

H. A. Brandon for Bird & Son, Inc.

C. C. Tiffany and Osborn Van Brunt for the Certainteed Products Corporation.

J. J. Low for Briggs & Turivas, Inc.

R. R. Hargis for Wilson & Company.

Paul E. Blanchard and John R. Baker for Armour & Company.

R. D. Rynder and Wm. M. Strack for Swift & Company.

A petition, filed on behalf of the City of Chicago, wherein permission was asked to intervene in these proceedings, was granted by the Commission on May 13, 1930.

ISSUES

The issues involved in this proceeding grew out of a decision of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation* v. *Baltimore and Ohio Railroad Company*, 96 I. C. C. 682, decided June 15, 1925. The decision of the Interstate Commerce Commission in the aforesaid case prescribed a distance scale of reasonable maximum rates on iron and steel articles, in carloads, from the Pittsburgh Group to the destination territory under consideration, which included certain points in Illinois, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Following the receipt of opinion of the Interstate Commerce Commission in the *Jones & Laughlin Steel Corporation* case, *supra*, the carriers held conferences among themselves, and jointly with the shippers and receivers of iron and steel articles worked out an adjustment for Illinois territory which was thought to be in harmony with the decision referred to. The rates proposed were filed to become effective April 25, 1926, and the schedules were suspended in I. & S. Docket 2655, *Iron and Steel Between Points in Illinois Committee Territory.*

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On account of the failure to realign at the same time the rates on iron and steel articles within the Chicago District, hereinafter referred to as the "District"; and also because of the failure of several of the interested carriers to revise the rates from Gary, Indiana, to points within the District in harmony with the scale in Docket 15110, *supra*, the suspension order was subsequently vacated except as to the rates from Chicago Heights, Illinois, and Gary, Indiana. Thereupon, at the request of the Interstate Commerce Commission, the carriers gave consideration to the realign-

ment of the rates on iron and steel articles between Chicago Heights, Illinois, and Gary, Indiana, on the one hand, and points within the District on the other; and between points within the District. Tariffs were filed to become effective October 20, 1926, naming rates to apply within the District of 3, 5½ and 6½ cents, per hundred pounds, respectively, for one-, two- and three- or more line hauls, carload minimum 60,000 pounds, with an alternative rate of 8 cents per hundred pounds, minimum 36,000 pounds, applicable to two- and three-line hauls. These schedules were protested and the Interstate Commerce Commission, the Public Service Commission of Indiana and the Illinois Commerce Commission suspended the said schedules. The cases were heard, in part, on February 16, 1927.

In the meantime, numerous conferences were held between the carriers and representatives of the various shippers in the District, with a view to bringing about an adjustment of the rates within the District which would be satisfactory to the shippers and carriers alike.

As the result of these conferences, tariffs were filed effective March 19, 1927, cancelling the schedules under suspension and the proceedings were discontinued and new schedules were filed to become effective April 30, 1927, and on later dates, naming rates of 3, 3½ and 4 cents to supersede the effective rates of 2½, 2½ and 3 cents respec-

tively, for one-, two- and three- or more line hauls, for application within the District, such rates to apply not only on iron and steel articles but on commodities generally, except grain, grain screenings and railway equipment moving on its own wheels, and excepting livestock via The Baltimore and Ohio Chicago Terminal Railroad; and similar rates to apply on the same commodities, except

brick and articles taking the same rates (including common brick), between points within the District on the one hand, and Chicago Heights on the other, and to and from points adjacent to the District on carload traffic on which Chicago rates apply. The so-called "Compromise Rates" were suspended by the Interstate Commerce Commission in its Docket I. & S. 2900, by the Public Service Commission of Indiana in its Docket 8939, and by the Illinois Commission in its Dockets 17250 and 17269.

The Interstate Commerce Commission, upon its own motion in Docket 19610, in view of the limited record which could be developed under the issues presented in the suspension proceeding, entered upon an inquiry and investigation into and concerning the lawfulness of *all rates and charges* for switching within the District of all carload traffic moving in interstate commerce, and the relation of those rates and charges for like switching in intrastate commerce, with the view to prescribing such reasonable, proper, non-discriminatory, non-prejudicial and otherwise lawful switching rates for said traffic, as the facts and circumstances appeared to warrant.

No general investigation of switching rates within the District was instituted by the Illinois Commerce Commission, and its inquiry in this proceeding is confined to the lawfulness of the proposed intrastate rates covered by the tariffs under suspension in Dockets 17250 and 17269.

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DESCRIPTION OF CHICAGO SWITCHING DISTRICT: The boundaries of the District, as defined in Agent Galligan's Tariff Ill. C. C. No. 43, are described in Appendix "A" attached hereto and made a part of this order. The District is approximately forty miles in length and from seven to fifteen miles wide, and is densely populated. It covers an area

larger than any other switching district in the United States, comprising over six hundred square miles, and is served by thirty-five railroads which maintain a network of more than five thousand miles of track within the boundaries of the District serving over four thousand private industries. The Manufacturers Association of Chicago Heights urges that the boundaries of the District be extended to include Chicago Heights, a point shown by the record to be approximately 3.7 miles beyond the southern boundary of the District, now generally taking the Chicago District rates. The Chicago and Eastern Illinois Railway Company, which serves Chicago Heights, also contends for the inclusion of this industrial center within the switching limits. This feature will be hereinafter further discussed.

HISTORY OF CHICAGO SWITCHING DISTRICT RATES: Prior to August 1, 1911, the rates, charges and practices of the carriers covering the switching service within the District were in an unsatisfactory, and what has been described as, a chaotic condition. Each carrier within the District published its individual switching rate. No joint rates were in effect. During 1910 a Joint Committee was organized composed of shippers and carriers, with the object of establishing some uniformity in local switching rates. After many conferences, various differences were harmonized, and an agreement was entered into which has since been known as the "Lowrey Agreement", which was translated into an "All Commodity" tariff, effective August 1, 1911,

establishing uniform, individual and joint rates on all commodities except coal, coke and grain. The record shows that the exception on coal and coke was removed in June, 1927, on Illinois intrastate traffic, and in July, 1927, on interstate traffic. The rates in effect prior to the Lowrey Agreement supplied the measure by which the new rates

were determined. The all-commodity rates published under the Lowrey Agreement were 1½ cents for one- and two-line hauls, and not to exceed ½ cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reductions in rates since 1911, the present all-commodity rates are 2½ cents for one- and two-line hauls, and 3 cents for three-line hauls, as compared with the proposed rates of 3, 3½ and 4 cents, respectively, minimum 60,000 pounds.

The record shows that the carriers generally concede that exceptions should be made to the proposed all-commodity basis of rates, carloads, on such commodities as slag, cinders, quarry strippings, et cetera, which are without commercial value, the accumulation of which at industries is generally regarded as a nuisance and impedes the operation of the plant and can only be disposed of by removal through cooperation of the carriers.

In addition to the foregoing, the Chicago & Illinois Western Railroad desires to make an exception of tar products, due, as alleged, to the imminent loss of the traffic if any increase is made in the present rates.

Docket 17513: At the hearing on September 20, 1928, a motion was made by the complainant in this proceeding to dismiss, without prejudice, insofar as the complaint attacks, rates on crushed slag different from those on crushed stone and gravel within the District. The complainant explained that the primary purpose for filing the complaint was to seek different rates on crushed slag from those on crushed stone and gravel, and this issue having

since been adjudicated, asks that the complaint be dismissed.

The complainant further stated:

> "The position of the Illinois Slag & Ballast Company is identical with the position of the crushed stone operators within the Chicago District."

No further testimony was offered with respect to the issues in Docket 17513 and the complainant's motion to dismiss should be granted.

COST STUDY

Originally, as appears from the foregoing, the carriers endeavored to realign the rates on iron and steel articles only. The Interstate Commerce Commission thereupon, in its notice of October 25, 1926, requested that the carriers prepare and submit statistics relating to the shortest, longest and average hauls on iron and steel articles within the District, to be accompanied by detailed cost data. The request was later changed to include all commodities embraced in the 69 classes provided for in the carriers' annual report to the Commission. Pursuant thereto certain statistics were compiled on 42,666 cars moved in September, 1926, while the cost study was prepared for only 26,166 cars.

Fifteen of the carriers operating within and adjacent to the District and between the District and Chicago Heights, Illinois, collaborated in a joint cost study of the switching movements originating and terminating within its boundaries.

This study was introduced upon request of the Interstate Commerce Commission without restrictions as to the specific carriers to be included. The study was based upon the Coverston-Saur formula, briefly described hereinafter, and embraced seven trunk lines, three large switching and terminal roads (belt lines), and five smaller switching and terminal roads (so-called industrial roads), hereinafter collectively called the study roads, as follows:

Trunk Lines

Chicago, Burlington & Quincy Railroad
Chicago & North Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island & Pacific Railway
Elgin, Joliet & Eastern Railway
Illinois Central Railroad
Pennsylvania Railroad

Large Switching & Terminal Companies	*Small (industrial) Switching & Terminal Companies*
Baltimore & Ohio Chicago Terminal Railroad	Chicago & Illinois Western Railroad
Belt Railway of Chicago	Chicago Short Line Railway
Indiana Harbor Belt Railroad	Chicago, West Pullman & Southern Railroad
	Pullman Railroad
	Illinois Northern Railway

The study covers carload movements only and segregates the expenses incurred thereon into three general classes, namely, clerical, switching and car detention or maintenance. Taxes and returns on investments are provided for by the use of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.

Clerical. This expense represents the cost incurred to prepare records at the point of origin and the point of destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each terminal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.

Switching. This expense represents the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic and general expenses. The total switching expense, is reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinc-

tive parts make up the switching service as a whole and are designated "elements of service." These elements represent switching work such as classification, transfer, interchange and industrial and team track switching. The elements of service embraced in a given route between a shipper and a consignee are combined under an "index number" so as to show the total switching cost for each car. The respective index cost is then assigned to each car moving over the same route.

Car Detention. This expense embraces the maintenance of freight train cars inclusive of an apportioned amount of superintendence, maintenance and general expenses. The total car detention expense is reduced to the cost per serviceable car day, which is applied to each car for every day that it is in switching service.

Operating Ratio. After having obtained the total operating expense for the traffic under review, provision must be made for taxes and a fair return upon the property used in performing the service. It is suggested that this be accomplished by means of an operating ratio, which is to say that the total costs as determined represents, for example, 67% of the rate or revenue, which should be collected for performing such service. This would allow the difference, or in this illustration, 33% for taxes and profit or return on the investment.

The formula introduced by the carriers used an operating ratio of 66.67%.

The carriers claim that an operating ratio of 67.4% (correct figure should be 69.2 as will be explained later) was necessary for the railroads of the country as a whole to earn 5.75% upon their investment during the year 1926. However, the carriers herein contend for a ratio lower than 66.67%, whereas the shippers contend for a higher ratio.

The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August and October, 1927. The unit costs so

determined were then applied to the 26,166 cars previously mentioned which were embraced in the traffic analysis as of September, 1926, and hereinafter referred to as "study cars." The foregoing also applies to 638 additional study cars which moved between Chicago Heights and the District during September, 1926.

The following tables, prepared from the carriers' exhibits, show the total traffic inclusive of study and nonstudy cars.

Study and Nonstudy Cars
Chicago Switching District

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
One-line Haul—								
Study	7,573	17.75	1,951	4.57	2,426	5.69	11,950	28.01
Nonstudy	595	1.39	7,017	16.45	134	.31	7,746	18.15
Total	8,168	19.14	8,968	21.02	2,560	6.00	19,696	46.16

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	5,472	12.82	5,853	13.72	158	.37	11,483	26.91
Nonstudy	1,958	4.59	4,257	9.98	11	.03	6,226	14.60
Total	7,430	17.41	10,110	23.70	169	.40	17,709	41.51
Three-line Haul—								
Study	803	1.89	1,930	4.52	.....	....	2,733	6.41
Nonstudy	793	1.85	1,735	4.07	.....	....	2,528	5.92
Total	1,596	3.74	3,665	8.59	.....	....	5,261	12.33
Total (Study)	13,848	32.45	9,734	22.82	2,584	6.06	26,166[1]	61.33
Total (Nonstudy)...	3,346	7.84	13,009	30.49	145	.34	16,500[2]	38.67
Grand Total...	17,194	40.29	22,743	53.31	2,729	6.40	42,666	100.00

1—15 Study roads.
2—20 Nonstudy roads.

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Between Chicago Switching District and Chicago Heights

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	38	2.94	354	27.41	.....	.....	392	30.35
Nonstudy	56	4.33	338	26.16	.....	....	394	30.49
Total	94	7.27	692	53.57	.....	....	786	60.84
Three-line Haul—								
Study	135	10.44	87	6.74	.....	....	222	17.18
Nonstudy	79	6.12	156	12.07	.....	....	235	18.19
Total	214	16.56	243	18.81	.....	....	457	35.37
Four-line Haul—								
Study	6	.46	18	1.39	.....	....	24	1.85
Nonstudy	.....	.....	25	1.94	.....	....	25	.94
Total	6	.46	43	3.33	.....	....	49	3.79
Total (Study)	179	13.84	459	35.54	.....	....	638	49.38
Total (Nonstudy)..	135	10.45	519	40.17	.....	....	654	50.62
Grand Total ..	314	24.29	978	75.71	.....	....	1,292	100.00

The average costs, hauls and loading as compiled by the carriers, based upon the study cars and shown in their exhibits are as follows:

Switching Costs Between Points in the Chicago Switching District

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost		Average Total Cost Based on Operating Ratio 66.67%	
				Per Car	Per 100 lbs.	Per Car	Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
One-line.....	11,950	13.12	86,250	$15.94	1.8	$23.92	2.8
Two-line	11,483	21.32	84,145	18.92	2.2	28.39	3.4
Three-line...	2,733	26.53	85,405	21.52	2.5	32.29	3.8

[1] *Switching Costs Between Points in the Chicago and the Chicago Heights Districts*

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost		Average Total Cost Based on Operating Ratio 66.67%	
				Per Car	Per 100 lbs.	Per Car	Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
Two-line	392	31.66	75,171	$18.77	2.5	$28.15	3.8
Three-line...	222	33.42	74,416	21.62	2.9	32.42	4.4
Four-line....	24	41.94	84,994	21.57	2.5	32.35	3.8

1—No one-line hauls involved.

After the cost study was submitted into the record the shippers raised many objections to the accuracy of the methods and figures used by the carriers. The carriers also at a later date made additional claims of costs.

The important criticisms of the carriers relate to the following which would tend to increase the determined costs:

1. The studies were made during the summer and fall periods without allowance being made for some of the increased costs incurred during the winter months. This is based upon an alleged check indicating that less cars were handled and more fuel consumed during the months of December, January and February than in any of the other nine months of the respective years 1925, 1926 and 1927.

2. The cost figures reflect the level of wages in 1927. Later increases granted and pending have not been included.

3. No allowance was included by the trunk-line study roads for the transportation of locomotive fuel over the respective road's own lines or by the three large belt lines for distributing coal to their respective fuel stations.

4. No part of the maintenance expense of main tracks to cover their use in the switching service was included in the switching costs.

5. Costs borne by the intermediate and the terminating roads for the return of some empty cars were omitted.

On the other hand the shippers point to other infirmities, both as to the theory and the application of the carriers' formula, of which the following are considered the most important and would tend to lower the costs:

1. On the basis of the serviceable car-day detention, a portion of the maintenance expenses of freight-train cars, or so-called car detention, was allocated to the cost of switching. The shippers' primary objection to this is that the use of the serviceable car-day as a proper basis for this apportionment is erroneous because it comprehends

only a time factor, no consideration being given to wear and tear from use as measured by mileage. This criticism is on the grounds that repairs, the most important item of

maintenance, result principally from damage done when a car is in motion and not while standing still. It is contended that this basis overstates the cost for intra-district traffic and understates the cost for road haul traffic. In this connection the shippers also point out that the responsibility for empty movements as between road and switching services has not been carefully observed, resulting in both over and understatements in the costs, and that it is erroneous to include private cars in the computation of the unit cost per car-day for maintenance, inasmuch as the carriers perform only running repairs on private cars except in case of accident.

2. Failure to determine distinct engine-hour costs for switching and weighing cars at industries because of the use of lighter engines in those services attended by lower engine-hour costs and because in most instances that service is performed on tracks owned and maintained by the industries.

3. The determination of unit costs based upon movements during a test period of one week in 1927 on each respective carrier and the application of those unit costs to traffic materially different in volume in another period or during September, 1926, results in an overstatement. The test period should be of longer duration so as to more accurately reflect the normal movement of traffic and the costs so determined should be applied to the traffic moving during the test period instead of another period in which the traffic may not be similar.

4. Failure to reduce the cost by demurrage and weighing charges collected results in an overstatement of the cost as a basis for a distinct transportation rate where as here the expenses attached to those services are included in the cost.

5. Throughout the entire proceeding the shippers persistently contended for the inclusion of the Chicago Junction Railroad in the cost study, on the grounds that this road handled a large volume of business, most of which was short haul traffic, and that the omission of such a carrier would unduly increase the cost as indicated by the study roads. The shippers also object to the inclusion of the Elgin, Joliet and Eastern with special reference to the large volume of business included in the study which moves partly outside of the District. For these reasons the shippers contend that the cost study is not representative of the intradistrict traffic as a whole.

6. The operating ratio of 66.67%, mentioned by the formula, is stated to be much too low.

7. Subordination of switch movements to passenger and road freight trains has inflated the cost of intradistrict traffic.

8. Many transfer costs include costs of setting out and picking up cars at the beginning or end of the transfer run. Combinations of these transfer costs have then been applied on long transfers resulting in overstatement of costs.

9. General criticism was made of the carriers' operating methods and the surrounding conditions as affecting the costs. These relate to circuity of movements, operating methods and restrictions at interchange points, lack of trackage rights to facilitate hauls, and failure to perform joint switching in some instances where two or more carriers serve the same plant.

Representatives of the Illinois Commerce Commission submitted testimony indicating that the costs as compiled by the carriers are overstated due to the inclusion of time prior to the actual assignment of cars to the particular

switching movements and also subsequent to their release and the lapse of sufficient time to return cars to a carrier's yard. They also agree with the shippers' contention that the costs should have been reduced by the amount of demurrage collected.

Other less important criticisms were made, but it is not deemed necessary to discuss them in detail.

The following table summarizes and compares the results of the cost study revised to the basis of the respective claims of the carriers and shippers:

	11,950 Cars One-line		11,483 Cars Two-line		2,733 Cars Three-line	
	Carriers	Shippers	Carriers	Shippers	Carriers	Shippers
Operating Exp. (Study)	$190,552	$190,552	$217,317	$217,317	$58,829	$58,829
Net Agreed Undercharge	4,031	4,031	2,468	2,468	414	414
	$194,583	$194,583	$219,785	$219,785	$59,243	$59,243
Disputed Adjustments						
Net Undercharge	4,500	.....	9,787	.....	7,679	.....
Net Overcharge	.....	35,684	.....	35,510	.....	7,826
Revised Operating Expense	$199,083	$158,899	$229,572	$184,275	$66,922	$51.417
Operating Expenses per 100 lbs.	1.93c	1.54c	2.38c	1.91c	2.87c	2.20c

In the following table we have compared the carriers' original claim of costs (exhibit 7-A) with the present and proposed revenues of the same cars for which costs have been determined.

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers' Orig. Claims									
One Line	2.5	2.59	1.85	71.43	3.0	3.00	1.85	61.67	2.77
Two Line	2.5	2.68	2.25	83.96	3.5	3.69	2.25	60.98	3.37
Three Line ...	3.0	3.58	2.52	70.39	4.0	4.33	2.52	58.20	3.78
Average (weighted)...				76.60				60.82	

Little need be said regarding the foregoing figures except to point out that the carriers have at a later date made many claims of additional cost. After making adjustment for such claims as could be converted into definite amounts the carriers' claims become as shown in the following statement:

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers Original Claims									
One Line	2.5	2.59	1.93	74.52	3.0	3.00	1.93	64.33	2.89
Two Line	2.5	2.68	2.38	88.81	3.5	3.69	2.38	64.50	3.57
Three Line ...	3.0	3.58	2.87	80.17	4.0	4.33	2.87	66.28	4.30
Average (Weighted)...				81.34				64.58	

On the other hand the shippers have presented much evidence of claimed overstatements of cost. The net result of such adjustments claimed by the shippers as could be stated in definite amounts are as follows:

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 76.80%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Shippers' Claims									
One Line	2.5	2.59	1.54	59.46	3.0	3.00	1.54	51.33	2.01
Two Line	2.5	2.68	1.91	71.27	3.5	3.69	1.91	51.76	2.49
Three Line ...	3.0	3.58	2.20	61.45	4.0	4.33	2.20	50.81	2.86
Average (Weighted)...				64.77				51.42	

A study of the foregoing summaries denotes that there is a wide difference between the costs as claimed by the two contending parties. According to the claims made by the carriers the present rates are much too low and the rates proposed are not much in excess of the proper rates. On the other hand based on the claims of the shippers even the present rates are excessive.

The above differences in results are attributable, in the main, to the disagreement between shippers and carriers as to the theory and the application of the carriers' cost formula relative to the allocation of the maintenance of cars (car detention); the inflation of averages for the study period of September, 1926, by the carriers' application of higher element-of-service costs developed on specific movements of relatively low volume during the test period, lim-

ited to one week in 1927, to the same elements of service performed on similar movements of greater volume during September, 1926, without a compensating movement of higher volume in the latter period at the lower test period costs developed on other elements of service; the carriers' failure to develop distinct costs for industrial switching, weighing, etc., because of lighter engines employed with less expense than in other switching service; and the variation between the operating ratio of 76.8 per cent proposed by the shippers and the operating ratio of 66.67 per cent suggested by the formula and considered as maximum by the carriers.

AGREED ADJUSTMENTS OF COST DATA

Winter Operations

The principal adjustment on which the carriers and the shippers have agreed is the effect of winter operations. The cost studies were prepared in the summer and fall and it is claimed that costs would be increased in the winter months. The amount of this adjustment was agreed upon by the carriers and shippers and appears reasonable. In our opinion the cost data (Exhibit 7-A) should be adjusted by these amounts (Exhibit 83, p. 4).

Miscellaneous Minor Items

There were a number of minor adjustments claimed by the shippers which were the subject of certain conferences with the result that definite amounts were agreed upon. We have carefully examined the record as to these items and believe them to be reasonably correct. (Exhibit 83, pp. 1-3.)

DISAGREEMENTS

Disparity Between Study and Other Roads

One of the most important criticisms of the shippers is directed toward the question as to whether the cost study, as conducted on the fifteen participating railroads, is representative of the transportation situation throughout the District. The criticism principally refers to the inclusion of the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the "E. J. & E.," and the exclusion of the Chicago Junction Railroad.

The E. J. & E. traffic, which is included in the cost study, is composed largely of traffic whose movements are partly inside of the District and partly outside of the District. The record shows that the E. J. & E. is not a party to the Lowrey Tariff and that many of its rates are on a higher basis.

The Chicago Junction Railroad is one of the largest switching roads in the District and handles a large volume of short hauls. Many of its rates are below the Lowrey basis. This road operates in the densely built up Stock Yards District and surrounding neighborhood.

Since the present case involves the fixing of rates only within the District and between the District and Chicago Heights, Illinois, it is difficult to understand why the carriers should have included, in determining the costs, a great volume of traffic moving between the District and other points outside of the District, such as Gary, Indiana. It is not proposed that the District be extended to include Gary, Indiana, and neither is there any evidence that any such movements are similar to movements within the District. The record shows that of the 11,950 one-line haul cars in

the study, 7,093 cars were E. J. & E. movements, of which 6,854 involved movements outside of the District. *Thus over 57% of the one-line haul cars used as a basis of determining intradistrict switching costs actually moved outside*

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of the District. Of the total of 11,483 two-line haul study cars, 1,264 involved movements on the E J. & E.; of the 2,733 three-line haul study cars, 730 involved movements on the E. J. & E. The record does not disclose how many of the two- and three-line E. J. & E. movements are outside of the District.

A comparison of the carriers' original cost study, Exhibit 7, which covers the fifteen study railroads, with the carriers' original statistical Exhibit 11, which covers the entire traffic on all railroads in the District, shows that the classes of traffic included in the cost study are not, in many cases, similar to the classes of traffic excluded from the study. As the Chicago Junction Railroad operates extensively in the Stock Yards District, it is reasonable to presume that the exclusion of the Chicago Junction Railroad from the cost study is largely responsible for the dissimilarity between the group of study cars and the remainder of the traffic: illustrations of this point are, one-line haul, fresh meats, no cars in study, 130 cars in other traffic; other packing house products, 10 cars in study, 1294 cars in other traffic; agricultural implements, no cars in study, 94 cars in other traffic.

Since the original cost study Exhibit 7 did not show the revenues collected on the traffic covered by the cost study, the only comparison of costs and revenues possible, based upon the original showing of the carriers, was a comparison of the cost of the study cars with the revenues of all of the traffic. A study of the makeup of the cost study

traffic, as compared with the total traffic, indicated many important differences, of which the above reference to fresh meats, packing house products and agricultural implements is an illustration. This matter was called to the carriers' attention with the result that they revised both Exhibit 7 and Exhibit 11, by preparing and introducing into the record Exhibit 7-A and Exhibit 11-A. The revised cost study Exhibit 7-A not only showed the cost of

handling the traffic studied, but also the present and proposed revenues pertaining to that particular traffic.

The carriers' revised statistical Exhibit 11-A sets forth the statistics pertaining to the cost study cars separately from the statistics pertaining to the cars not included in the study. The following summary of important characteristics of the study cars, as compared with the cars not studied, was obtained from Exhibits 7-A and 11-A.

COMPARISON OF PRESENT AND PROPOSED REVENUES PER HUNDRED POUNDS AND AVERAGE DISTANCE HAULED

	Present Rev. per Cwt.		Proposed Rev. per Cwt		Average Car Haul—Miles	
	Study Cars	Other Cars	Study Cars	Other Cars	Study Cars	Other Cars
	Cents	Cents	Cents	Cents		
One Line	2.6	1.3	3.0	1.7	13.12	6.49
Two Line	2.7	2.5	3.7	3.5	21.32	20.76
Three Line	3.6	3.4	4.3	4.1	26.53	25.45

This tabulation shows that in the case of one-line hauls the cars, which were studied for the purpose of determining costs, had an average haul of over 13 miles, which was more than twice the average haul of the cars not studied. A similar situation exists in the present revenues per hundred pounds, in that the carriers received 2.6 cents per

hundred pounds on the cost study traffic and exactly half that amount on the other traffic. The rates proposed by the carriers would result in an average revenue of 3¢ per hundred pounds on the cost study cars and only 1.7¢ on the other cars. In this connection it is interesting to note that the carriers' revised claim of cost for study cars indicates a cost of 1.93¢ per hundred pounds for one-line hauls, which greatly exceeds the revenues which they, themselves, proposed to collect on the traffic which was not included in the cost study.

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The average car haul and the present and proposed revenues of the two- and three-line hauls are slightly lower for the other cars than for the study cars, but the difference is not nearly as marked as in the case of single-line hauls.

Because of the great difference in the three known characteristics (average haul, present revenues and proposed revenues) of the other cars, as compared with the study cars, it does not appear reasonable that the costs as developed on the study cars should be assumed to represent the cost of handling the other cars.

It therefore would be wrong to compare the costs as developed on the study cars with the revenues of all the traffic. If any comparison is to be made, the only proper one would be to compare the costs as ascertained on the study cars with the revenues earned on the same traffic.

Since the record shows that a large percentage of the E. J. & E. traffic included in the cost study moves across the boundary of the District, either coming into or going out of the District, it would be very desirable to be able to segregate that traffic from the cost study. However, the record does not contain any information enabling us to make that segregation.

The record shows that the tracks of the E. J. & E., which would carry the traffic included in the cost study, lie principally in the State of Indiana, and to a small extent within the State of Illinois. The record also indicates that there are many rates on the E. J. & E. which are in excess of the Lowrey Rate basis. Should this information be used as a basis for a presumption that all interstate and intrastate Indiana movements on rates over both the present and the proposed Lowrey basis constitute traffic over E. J. & E., we would be assigning to the E. J. & E. 428 one-line haul cars, although the record definitely shows that

there are 7093 E. J. & E. cars in the study. On the two-line hauls, this process would assign to the E. J. & E. 1496 cars, although the record shows that there were only 1264 E. J. & E. cars in the study. On the three-line hauls, this process would assign to the E. J. & E. 1201 cars, although the record indicates that only 730 E. J. & E. cars are included in the study. This method, although at first appearing to have some merit, is thus proven to be incorrect, and if used for the purpose of eliminating the effect of the E. J. & E. would result in arbitrary reductions in the indicated revenues of the traffic under review. The record further shows that there are rates in the District which are in excess of the Lowrey basis other than those existing on the E. J. & E. The record also shows that many of the cars moving over the E. J. & E. moved on rates while at present are above the Lowrey basis would not exceed the proposed Lowrey basis, and thus would not be included in the aforementioned adjustment.

Based upon the present record, it is impossible to exclude the traffic of the E. J. & E.

Car Detention

In the compilation of cost of handling District traffic, the carriers have allocated the cost of maintaining freight cars (which includes car repairs, depreciation and retirements, together with certain overhead costs) solely on the basis of time.

They first determined (Exhibit 3) the average cost of maintaining one freight car for one day which amounted to $0.64352. This was based upon the experience of nine railroads whose operations practically cover the entire United States. This unit cost was then applied to the cars moving in the District on the basis of the number of days each car was assigned to a particular movement.

A great deal of criticism was directed against this method of allocating the cost of maintaining freight cars to the switching service in the District. This criticism was based largely upon the contention that the maintenance of freight cars was related much more closely to the amount of use made of the cars, or the miles traveled, rather than the element of time. For instance, it was stated that freight cars used in comparatively short hauls within the District were in motion only a small part of the total time required to handle the shipments. During most of the time the cars were actually standing still at the shipper's or consignee's places of business or in the railroad yards. On the other hand, cars used in long distance road haul traffic would be in motion a larger percentage of the total elapsed time.

The shippers have introduced an illustration which they claim is a very conservative calculation dealing with a car in a single-line movement in the District as follows: The record shows that the average loaded haul of single-line

cars moving in this study was approximately 12 miles. The shippers have added to this an allowance of an equal distance for the empty haul and another equal amount to provide for the shunting of the cars backwards and forwards in classification and other service, making a total distance traveled of 36 miles, claimed to be a conservatively high figure.

The shippers' Exhibit 13 contains a computation showing that the average number of car days assigned to single-line cars was 6.6 car days. (A correction of this figure, based upon the carriers' corrected Exhibit 7-A, would make it 6.2 car days, which, however, will have little effect upon the present computation.) Based upon a total haul of 36 miles per car and the average number of days in service of 6.6 days, the shippers have computed that the cars in switching service move only 5.5 miles per day as

compared with almost 30 miles per day for all operations, (or *more* than 30 miles per day if terminal movements are included). The shippers have carried this comparison still further on the basis of the normal average distance of 6 miles covered in one hour by switching locomotives indicating that if the car was in motion throughout the entire day it would have moved 144 miles. These figures indicate that since the cars traveled only 5.5 miles per day they were actually in motion only about 4% of the time and were standing still about 96% of the time.

Besides the objection to the sole use of the element of time in apportioning car repairs, serious objection was raised to the amount of time which was charged against the cars in the cost study. The shippers have pointed out that many of the cars in their opinion have unreasonably long detention (Exhibit 13, p. 45, Exhibit 83, p. 118) and

that costs have been assigned to many cars in the study which should be charged to prior or subsequent loads.

Accountants for this Commission have also made extensive studies of the time charged to cars in the cost study. This investigation was completed for 1018 cars and partially completed for 189 cars. This work represented a check of approximately 2200 car terminals. It was found that of the 1018 cars checked completely, 816 cars were in error. The reduction in the amount of time chargeable to these 1018 cars amounted to over 26%. The reduction made on the 189 cars checked by only *one* terminal amounted to over 16%. Exhibit 96, prepared and introduced by our accountants, contains the following summary:

SUMMARY OF TERMINAL DETENTION ON CARS CHECKED

	Cars Checked both for beginning and ending detention				Cars Checked either for beginning or ending detention			
	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total
Total number of cars checked	276	645	97	1018	.....	172	17	189
Number of cars corrected	223	516	77	816	.....	103	13	116
Number of cars Unchanged	53	129	20	202	.....	69	4	73
	(Hrs.)	(Hrs.)	(Hrs.)	(Hrs.)		(Hrs.)	(Hrs.)	(Hrs.)
Cost Study Terminal Detention	71596	196575	29069	297240	.....	52050	4779	56829
Corrected Terminal Detention	54293	142432	21365	218090	.....	43670	3834	47504
Deductions from Cost Study Detention: 1-Idle Time	10444	22249	4329	37022	.....	7171	882	8053
2—Unusual Delay of Loaded Cars	288	3054	240	3582	.....	144	.....	144
3—Reconsigned (Or Reshipped) Cars	533	753	.....	1286	.....	200	.....	200
4—Private Line Cars	2142	6451	30	8623	.....	.....	.....	.....
5—Return of Empty Cars from Base Yard to Interchange Point	3158	3269	295	6722	.....	92	15	107
6—Cars on Repair Tracks	696	755	72	1523	.....	312	.....	312
7—Miscellaneous Adjustments (clerical errors, etc.)	42	17612	2738	20392	.....	461	48	509
Total Deductions	17303	54143	7704	79150	.....	8380	945	9325

The foregoing table indicates that errors were found in very substantial amounts, being 24% in one-line hauls and 27% in both two-and three-line hauls. The record indicates that Exhibit 96 was carefully prepared after months of painstaking and careful investigation. It is further shown that our accountants reviewed with the Chicago and North

Western Railway Company each and every one of the 269 car terminals checked on that road, with the result that practically no change was made in the figures of the Commission's accountants. This is very significant in view of the fact that the corrections on the Chicago and North Western represent 27.6% of the total correction in time for all cars checked, although the volume of traffic checked on that road represents only 12% of the total checked, measured by car terminals.

The carriers have not contested the accuracy of Exhibit 96. The only rebuttal evidence offered by the carriers was a one page exhibit, No. 98, with the intent of showing that the cars checked by our accountants were not representative of the whole study but included a larger percentage of long detention cars than of cars having short detention.

This Exhibit 98 appears to have lost most of its import because Exhibit 96 states on its face (Comments, p. III) that it lays no claim to being representative of the entire group of cars in the study. Nevertheless, Exhibit 96 is conclusive to the effect that many serious errors exist in the amount of time charged against the traffic under review.

Exhibit 96 shows that almost 50 per cent of the errors in time which the carriers have charged against this intra-district switching is due to the conclusion of idle time of cars when they were not in fact assigned to the particular movement to which the time was charged (Exhibit 96). A great number of empty cars were placed on industry tracks without having been ordered by the industry. Such cars frequently remained on the carriers' tracks for many days

before they were actually ordered and brought up to the loading platforms. Important cases of this kind were found at the International Harvester Company, Deering Works on the Chicago and North Western, J. T. Ryerson Com-

pany on the Pennsylvania, and Brownell Improvement Company on the Baltimore and Ohio Chicago Terminal Railroad. Other important errors in the inclusion of excess time was found in the case of private line cars where the carriers had included time for such cars while they were standing on the tracks of the owner company, during which time the carriers had no responsibility whatever for the said cars. In addition, a great number of clerical errors were discovered which resulted in a very material correction.

The record (Exhibit 84, p. 188) clearly denotes that an error of considerable magnitude was made in assigning car detention on certain coke movements on the E. J. & E. The method used by this carrier resulted in charging against the 3,955 cars included in the study the entire available time for the 30 days of the month of September of all of the 922 coke cars that were found to have carried coke during the month. The carrier made no allowance for the time these cars were used to handle 4,990 coke movements within the Gary plant of the Illinois Steel Company. No allowance was made for time of car while unserviceable in repair shops or awaiting repairs. This method improperly charges all idle time of said equipment against the traffic included in the study. A calculation presented by the accountants of this Commission indicates that the carriers' claim of 7.06 days required for each of these coke movements should be reduced to approximately 3.16 days.

After the carriers had determined the number of days detention chargeable to each car in the study they applied thereto the average car detention cost per day of $0.64352.

This cost was based upon an average for nine trunk line railroads whose operations practically cover the entire United States. It includes the costs of all repairs to the

carriers' own equipment, except such damage as was caused by other railroads. It also includes the cost of repairs of damage to equipment of others for which these roads were responsible. The serviceable car days used by the carriers as the divisor include the serviceable days of all equipment on each of these roads regardless of ownership.

The record shows that the belt lines and industrial railroads own only a few freight cars and do very little repair work to freight cars not owned by them. As a result the car repairs costs of such railroads are extremely low as compared with car repairs on trunk line railroads.

These facts form the basis for certain objections on the part of the shippers to the use of the average car detention cost of $0.64352 per day.

The first objection is that this average cost is erroneous because it includes cost of making certain repairs incurred while the cars were in use by the belt and industrial railroads, while the number of serviceable car days used as divisor does not include the time that said cars spent on the lines of the belt and industrial railroads.

The second objection is that the carriers then have applied the average unit cost of $0.64352 to all movements on the belt and industrial railroads.

The third objection is that the unit cost has been applied to private line cars. (This is partly offset by the fact that the serviceable car days of such private line cars as were on the lines of the trunk line railroads on the dates the cars were counted have been included in the carriers' number of serviceable car days used as a divisor in determining the unit costs.)

These objections appear to be of considerable importance in a case such as the present involving only intra-

district switching and covering a territory in which a great number of belt and industrial railroads operate and where it is shown that eight (8) out of the fifteen (15) study railroads were belt or industrial lines.

Pursuing their general contention that time alone is not the proper basis for apportioning car repairs, the shippers have presented certain compilations as to the expense of maintenance of cars applicable to the District traffic on a basis which gives effect to both the element of use or miles traveled as well as the element of time. They have adopted in general a formula which was contained in the American Railway Engineering Association Bulletin for March, 1923, dealing with the question of apportionment of this class of expense. This formula was prepared by a committee of engineers of the American Railway Association.

The following is a brief summary of the shippers' computation of the costs applicable to one-line hauls. They first separated the average cost of maintaining one freight car for one day as determined by carriers in their Exhibit 3, amounting to 64.352 cents as between the two items of (a) repairs and (b) depreciation and retirements. The overhead accounts were prorated to these two groups. The results were as follows:

Repairs	49.59 cents
Depreciation and retirements	14.76 cents
Total	64.35 cents

It was considered that 65% (Formula basis) of the item of repairs, amounting to 49.59 cents per car day, was attributable to use while the remainder of this item and the entire cost of "Depreciation and Retirement" was attributable to time. This resulted in 32.23 cents being allocated to use and 32.12 cents allocated to time. The shippers then di-

vided the 32.23 cents per car day attributable to use by 30, which is the general average miles per car day during the year 1926, resulting in a cost of 1.1 cent per car-mile. From these basic figures, the shippers then computed the cost of car maintenance allocable to District traffic as follows:

The record shows that the average loaded haul of all single line cars in intradistrict traffic was 12 miles. In order to make adequate allowance for empty hauls and and movements in classification and other services the shippers have adopted an average distance haul of 20 miles per car to which they have applied a cost of 1.1 cents per mile, resulting in a cost of 22 cents per car for the element of use. In dealing with the element of time they have used the average detention of 6.6 days per car and applied thereto the cost of 32.12 cents per car day, as determined above, making a total cost applicable to the element of time of $2.11 per car. To the sum of these two items the shippers have added 15 cents per car in single-line traffic to cover any additional damage resulting from use on account of loading or unloading or general handling within the District. This has resulted in a total cost per car handled in single-line District traffic of $2.48, which compares with the cost of $3.95 per car claimed by the carriers.

The shippers applied the same formula to two- and three-line hauls, using the average days detention as computed fram carriers' Exhibit 7 and using for two-line hauls an average haul of 40 miles and Terminal damage of 30 cents, and for three-line hauls an average haul of 50 miles and Terminal damage of 45 cents. In this manner the shippers arrived at an average cost per car for car maintenance of $3.16 for two-line hauls and $3.78 for three-line hauls as compared with the carriers' cost of $4.88 for two-line hauls and $5.66 for three-line hauls. The amount of overcharge claimed by the shippers on this item of car detention is

$21,167 for one-line hauls and $19,536 for two-line hauls and $5,005 for three-line hauls.

A careful study of the methods used by the shippers indicates that they did not follow the American Railway Engineering Association formula in all respects and also that they made certain estimates which are not entirely supported in the record.

The record does not contain the facts and figures necessary to make a correct adjustment of either the carriers or the shippers claim of car detention costs.

SEPARATE ENGINE HOUR COSTS—WEIGHING AND INDUSTRIAL SERVICE.

Criticism has been directed at the cost study in respect to the engine-hour figures used by the carriers in determining the costs of weighing and industry switching. The carriers developed engine-hour costs which were applied to all elements of service. Consideration was given by some of the carriers to differences in the characteristics of certain lines, districts or operating divisions and separate engine-hour costs were developed for those locations; in applying such costs indiscriminately to various elements of switching service, it was claimed that the carriers burdened the weighing and industry services with costs that should have been distributed elsewhere.

The carriers do a considerable amount of industry switching on property owned by the industries. Most of the large industries and many of the smaller industries own and maintain the industry tracks located on their properties. In connection with switching work performed by the carriers on the tracks of such industries it is manifestly improper to charge up the expense of maintenance of way and struc-

tures and the related general expenses. It is also unfair to add to such expenses a percentage for return on investment.

Nevertheless, the method followed by the carriers in applying the same average engine-hour against all elements of service does have the effect of assigning improper items of expense and investment against industry switching and weighing in all cases where the industries own and maintain the tracks on their own properties. It has been shown that maintenance of way and structures comprises about 14.7% of the switching costs. It would not be proper, however, to conclude that the industry and weighing costs, incurred by the carriers on the premises of industries owning and maintaining their own tracks, should be reduced by the latter percentage for the reason that, if the carriers were to set up separate engine-hour costs for each class of switching service, expenses eliminated on one class of service would be assessed against another class of service and in the application of such elements of costs to the intradistrict traffic the reduction of industrial costs would be partly offset by an increase in other costs.

It has been shown by the shippers and admitted by the carriers that industrial switching is performed to some extent by lighter engines than those used in other services. The engine-hour costs for industrial and weighing service should be somewhat less due to this factor.

Certain computations have been made by both shippers and carriers to show the effect of setting up separate engine-hour costs for industry switching. No attempt will be made to explain the details of these calculations except to state that various assumptions have been made by both parties which make the results doubtful. The effect on the total switching costs after making a complete redistribution of

engine-hour costs ranges from 2% to 4% reduction in the total switching costs. The carriers' computation shows a reduction of 2%, which is claimed to be too insignificant to warrant the refinement of methods desired by the shippers.

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The contention of the carriers that a reduction of 2% in total switching costs does not justify revision of the methods of determining the costs is not well founded for the reason that numerous small adjustments, if not offset by others, will materially affect the final result. While neither of the calculations appears to be conclusive, the evidence indicates that a reduction in the total costs should be made for these errors.

Transportation of Locomotive Fuel

The carriers claim (Exhibit 83, p. 122) that their cost data (Exhibit 7-A) is understated by the failure to include cost of transporting locomotive fuel used by the Trunk Lines where the coal was moved over their own rails. The carriers found that the average cost per engine-hour for locomotive fuel on certain switching roads was $2.42 while on certain Trunk Lines the average was $1.34.

The following table, taken from carriers' Exhibit 2, indicates the cost per engine-hour for locomotive fuel on each of the seven Trunk Lines and eight Belt and Industrial Lines:

FUEL COSTS PER ENGINE HOUR

Trunk Lines (7 Roads)		Belt and Industrial Lines (8 Roads)	
C. R. I. & P.	$1.83	I. H. B. (Blue Island Hump)	$1.31
C. & N. W.	1.65	C. W. P. & S.	1.58
C. B. & Q. (Gen'l. Yd.)	1.51	C. S. L.	1.75
C. M. St. P. & P. (Milw. Div.)	1.45	Pullman	1.79
Pa. (55th St.)	1.44	Ill. Nor.	1.90
Pa. (59th St.)	1.44	C. & I. W.	2.25
C. M. St. P. & P. (Chicago Ter.)	1.22	I. H. B. (Other)	2.41
I. C. (Markham)	1.20	B. R. C.	2.47
I. C. (Chicago Station)	1.20	B. & O. C. T.	3.12
Pa. (Colehour)	1.20	I. H. B. (Gibson Hump)	3.23
E. J. & E.	.97		
C. B. & Q. (Other Sw. Dist.)	.64		
Av. as computed by carriers	$1.34		$2.42

The difference between the above averages computed by the carriers of $1.08 per engine-hour was assumed to represent freight charges paid by the switching roads.

If the carriers are correct in stating that the difference in cost of fuel per engine hour represents transportation costs, it is exceedingly difficult to account for the great variations in these costs as shown by the above table.

For example, the fuel cost per engine-hour on the Chicago and North Western is $1.65, while for the Illinois Central Railroad Company it is $1.20, although both roads are Trunk Lines, and both have lines into the coal fields. It is also impossible to account for the enormous difference between the fuel cost per engine-hour of $0.64 on the Chicago, Burlington & Quincy Railroad Company and $1.83 on the Chicago, Rock Island and Pacific Railway Company. Likewise, in the group of Belt and Industrial Lines, we find a variation between the maximum and minimum cost of $3.23 and $1.31 respectively, although in each case transportation costs are supposed to be included. It is also surprising to

notice that these maximum and minimum unit costs were determined by the same railroad, the Indiana Harbor Belt Railroad Company, the maximum being at their Gibson Hump Yard and the minimum at their Blue Island Hump Yard. A further disturbing factor is indicated by the fact that the fuel costs per engine-hour of five out of seven Trunk Lines (the first six items in above table), which are supposed to exclude transportation costs, are in excess of the Indiana Harbor Belt Railroad Company's Blue Island Hump unit cost which is supposed to include transportation cost.

The above facts furnish a clue indicating that there must be other factors besides the cost of transportation of locomotive fuel which affect the final unit cost of fuel per engine-hour. We have given this matter some study and have concluded that there are many important factors which have a bearing on the final unit cost of the fuel per engine-hour.

A few of these factors are as follows:

1. Basic cost of fuel.
2. Cost of handling.
3. Heating values of various kinds of coal.
4. Quantities consumed by various types of engines.
5. Amount of non-productive engine time as related to net engine hours.

While there is no question that the Trunk Line Railroads are entitled to include as costs of the switching business the expense of transporting fuel over their own lines from the point of purchase to the District, they have utterly failed to make any proof as to the correct amount to be allowed. Fanciful calculations, such as those presented, are without meaning or value.

Abnormal Costs—One Week Test Period

The shippers claim that the costs are overstated by reason of the fact that the unit costs developed in the test periods in the year 1927 were applied to the traffic moving in the month of September, 1926, in which latter period the volume of traffic of many industries differed materially from that of the test periods. It is claimed that many high unit costs resulting from small volume in the test period were applied to large volumes in September, 1926, and that this effect is not offset by the low unit costs.

In support of this contention, the shippers have cited many instances (Exhibit 83, pp. 25, 26, 27, 28, 29, 45, 49 and 146) where high element costs resulting from low volume in the test period were applied to large volumes in September, 1926. An illustration of the shippers' criticism is that of the Pennsylvania Railroad Element No. 350, industrial switching at Albert Schwill & Co. During the test period of one week in October, 1927, four loaded cars were switched at this industry, producing an average cost of $15.83 per

car, (See note a), which cost was applied to 85 intradistrict cars moving in the month of September, 1926. This is an example of the development of a high cost based upon low volume in the test period which was applied to a large volume in another period.

In addition to the illustrations cited above, the shippers have made a computation (Exhibit 83, p. 175) showing that the application of costs developed in the test periods to traffic of different volumes in September, 1926, resulted in a much higher average study cost of industry and team track switching than the corresponding average for the weekly study periods. The amount of these excesses are $0.85 for single-line hauls, $0.60 for two-line hauls and

$0.33 for three-line hauls. Based on these figures the shippers conclude that the carriers' costs are overstated by the following amounts:

1-line hauls	$10,165.15
2-line hauls	6,895.20
3-line hauls	902.55

The carriers reply (Exhibit 83, p. 176) to this criticism by stating that any increase in the cost by application of high unit costs is offset by a reduction from the use of many abnormally low unit costs. They also cite the average switching costs developed in the cost study as evidence of efficient operation, the inference being that these costs are reasonable for this traffic.

It is extremely difficult to determine from the record the effect of this matter upon the costs developed in the study. The carriers' claim that high costs are offset by the low costs has some merit, however, it would take a great number of shipments at a cost *slightly* below normal to offset a few shipments at costs *much* above normal. This would necessitate a much greater volume of business in September, 1926, than during study periods, which condition is not shown by the evidence.

Note a. This cost compares with the average for the Colehour district (in which this industry is located) on the Pennsylvania Railroad of $1.89 per car.

The carriers' method of developing costs in one period of such short duration and applying them to traffic moving in another period is so confusing and unsatisfactory that serious doubt must arise as to the accuracy of the final results.

Demurrage and Weighing Revenues

In stating the revenues involved in this proceeding, the carriers have included nothing for demurrage or weighing,

although the expenses developed by the carriers include the expenses relating to those services. The record does not contain sufficient evidence to determine the amount of such revenues pertaining to the intradistrict movements or the amount of expenses in respect to such revenues. A check of the demurrage records for 1112 cars, moving during September, 1926, in intradistrict traffic, was made by representatives of this Commission. A fabulation of the results of this investigation showed actual collections of at least $1.88 per car. While the latter figure can not be considered to be representative of all the cars in the study, it does clearly indicate that demurrage is an item of revenue for intradistrict business and should not have been omitted by the carriers. The explanation given by the carriers in connection with this item, as also with several other items, that the adjustments were not made because of their insignificant character is futile when it is considered that the cost study has been made up through a collection of a multitude of small amounts.

Subordination of Switch Movements

The evidence shows that there are numerous grade crossings in the District, particularly on the Belt Lines, and that the established operating practice of the carriers is to hold switching traffic at such crossings for passenger and road freight trains to pass. An example is cited by the shippers (Exhibit 13, p. 41) of the run of the Indiana Harbor Belt

railroad from its Lake Front Yard to its Michigan Avenue Yard, a distance of 1.7 miles, requiring simultaneous clearance over five Trunk Line roads, which takes from 15 minutes to three hours with an average of 50 minutes (See also Exhibit 83, p. 42).

The carriers admit that the switch runs are subordinated to passenger and road haul movements but insist that the delays are properly chargeable to the switching business (Exhibit 83, p. 180). Since time is the basis of the cost study, whatever delays occurred during the test periods of 1927 were charged against the elements of transfer and interchange service developed during the test periods. These were later applied to the movements of District cars in September, 1926.

It is apparent that, while the operating practice may be entirely justified in the interest of rapid passenger and road freight service, all time incidental to delays at crossings should not be charged against the adjunct service of switching. There must be an equitable distribution of the time between the services benefited. It is apparent that with the complicated network of roads existing within the District, the delays incident to grade crossings must be considerable. The evidence is clear that an overcharge has resulted from the practice of the carriers in subordinating switching movements to through freight and passenger service, but the record does not disclose the extent thereof.

Errors in Transfer Costs

In the carriers' determination of the unit costs of transfer movements, certain errors have been made. During the test period yard conductors made up work reports classifying the work done by their trains during each assignment period. On these reports, designated as Form CS-1, the yard conductors showed the time devoted to each switching operation such as transfer and interchange movements.

When these reports were tabulated, the number of cars handled per hour in each element or type of service was

computed and the cost per engine hour was divided by the number of cars to determine the average cost per car for each particular operation.

The record (see Exhibit 84, pp. 193, 204 and 209) shows numerous illustrations of consecutive transfer movements made by the same train in which there is no lapse of time between transfer, but the composition of the train in the different transfer had changed. It is apparent that the number of cars in a train cannot change without some time being required to pick up or set out the cars. All of the time in the instances cited has been charged to the element of transfer switching. The carriers have attempted to justify their *cost methods* on the ground that the *operating practice* was in the interest of efficient operation. This explanation fails to show why proper apportionments of cost were not made between transfer and classification (or other) service. The final costs are distorted through the application of the incorrect element costs, but the exact effect cannot be ascertained from the record.

No Allowance in Cost Study for Increases in Wage Rates Since 1926

The carriers claim that the costs submitted are understated somewhat, due to certain increases in wage rates since the year 1926. While the carriers state that there have been increases ranging from 3 to 8% in the payrolls of the groups of employees involved, no evidence has been submitted to show to what extent these classes of employees have engaged in work relating to the District business, nor has evidence been submitted to show whether the increased wage rates have resulted in increased efficiency.

Omission of Switch Traffic Proportion of Cost of Maintaining main Tracks on Trunk Line Railroads

The costs submitted by the carriers contain nothing for the switching traffic's proportion of maintaining main tracks on trunk line railroad. The formula used in preparing the costs makes no provision for this expense probably because of the difficulty in making an equitable distribution between the various classes of traffic. While the main tracks are used principally by the traffic other than the traffic under review, it is nevertheless true that the switching business should bear some portion of the cost of maintenance and that the cost study is understated thereby.

Operating Ratio

All rates for service whether transportation or other service, generally should be sufficient to pay operating expenses and taxes and yield a fair return upon the fair value of the property used in performing the service. We have already discussed the evidence of cost of the service and come now to the provision for taxes and return on investment.

No evidence was offered as to the portion of the carriers' property which is used in performing intra district service or the value thereof. Neither was any evidence offered as to the amount of taxes chargeable to this traffic. Instead the carriers offered certain evidence as to the ratio (operating ratio) which in their opinion operating expenses should bear to the entire revenues; the difference between that per cent and 100 per cent representing the amount claimed for taxes and return.

The carriers' formula contains a figure of 66.67% representing operating ratio. This is simply a figure used to

demonstrate the application of the formula and does not have any weight in determining the proper operating ratio applicable in a particular case.

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The principal evidence of the carriers consists of data for the railroads of the country as a whole for the year 1926, indicating an operating ratio of 73.2% with a return of 4.4% on the investment. The carriers then attempted to show what operating ratio would have produced a return of 5.75%. This they claim to be 67.4%.

In this computation they seem to have made a very simple mistake in that they have assumed that whatever was added to the amount required for return would be deducted from operating expenses. Other than this computation there is no indication that the carriers are willing to cut operating expenses on the traffic under review in order to produce a larger net income. Their computation should have been on the basis of increasing the revenues to provide the necessary return. On this basis expenses would remain at 73.2 cents for each original dollar of revenue but the remainder of 26.8 cents would be increased to 32.6 cents making a new total revenue of $1.058. Of this revised revenue the operating expenses represent 69.2%. This is the true operating ratio developed from the carriers' figures for the country as a whole.

The carriers are not willing to accept the average operating ratio for the entire country, but claim that for the District an operating ratio of less than 66.67% should be used, the reason being given that with a greater investment per mile of road within the terminal limits a greater proportion of the revenues are required for taxes and return on the investment.

There is no question but that the investment per mile of

road in the terminal territory of Chicago greatly exceeds the investment per mile of road outside of the terminal. However, the record is not clear as to what proportion of such investment may be properly allocated to the intra district switching business. There is also the important ques-

tion of whether the volume of traffic is also greater in proportion to the increased investment per mile of road.

The shippers have attempted to show by a comparison of operating expenses per mile that the traffic is much heavier in the terminal as compared with railroad operations generally. If duplicate mileage due to trackage rights could be eliminated the computation would show still greater density.

The carriers object to the use of operating expenses as a test of volume of traffic and have made some estimates of car miles within the District comparing them with the car miles of the first operating division outside of the District. No evidence has been introduced as to the proper or actual operating ratio for the operating divisions adjoining the District. Such operating divisions no doubt move a much greater volume of traffic per mile of road than the roads as a while. Because of the unquestionable high traffic density of the operating divisions immediately adjoining the City of Chicago, a comparison, such as made by the carriers, would be unduly favorable to themselves. Since they are attempting to justify the use of an operating ratio determined from a study of the railroad operations in the country as a while, their comparison should have been between the District and the country as a whole, which, no doubt, would show a much greater difference in volume of traffic than was shown by the carriers' comparison with the adjoining operating division.

On the other hand the shippers' comparison of volume of traffic based on operating expenses per mile seems to have some value. Thus the monetary unit of the dollar is the basis of comparison. The carriers compare property values also on the basis of dollars invested. The carriers have based their evidence of the fair operating ratio upon computations of values, expenses and net incomes for the country as a whole in terms of the dollar. The amount re-

quired for a fair return and taxes will ultimately be in dollars. The ratio used to compute the provision for taxes and return will be applied to the particular operating expenses. The fact that those expenses are *great* (as shown infra), will have a very definite result in *increasing* the amount provided for the fair return and taxes when the ratio is applied thereto. Therefore, in our opinion, operating expenses represent a reasonable index of the density of traffic.

It is contended that the intradistrict switching business is more costly than other business due to the shipments originating and also terminating at industries within the District which are said to involve higher industrial switching costs than at points outside of the District. The record also shows that the tracks in the District were not laid out to take care of this business which fact tends to create more costly operations. On the supposition that this business is more costly, an operating ratio higher than the average could be applied because the higher the operating expenses, the higher the operating ratio required to earn a fair return on the same value.

The record also indicates that a considerable portion of the industry tracks in the District are owned by the shippers on which the carriers are not entitled to any provision

for taxes and return. This appears to be a matter of great importance but unfortunately the record is not clear as to what proportion of the industry tracks are owned by the shippers. The application of an operating ratio, without ascertaining and giving proper effect to this matter would work serious injustice to the shippers.

The record also contains evidence as to operating ratios used in certain other switching cases. These ranged from 77.2% to 86.6%.

Other evidence was introduced by the shippers indicating that nine of the principal switching roads in Chicago terri-

tory would earn an average of 5.75% on their investment if their operating ratio was 72.2%. The record also shows that on the basis of the Interstate Commerce Commission's tentative valuation these same nine carriers would earn 5.75% if the operating ratio was 76.8%. The shippers contend that no operating ratio lower than 76.8% should be used.

A comparison of the details in shipper's Exhibit 13 indicates that 48% of the "Switching Cost" in the study was incurred on railroads included among the nine carriers whose operations indicated an average operating ratio in excess of 76%. If the E. J. & E. is excluded from this computation the results indicate that 68% of the "Switching Cost" in the study was incurred on railroads included among the aforementioned nine carriers. It is also shown that eight out of the nine carriers used by the shippers in the study of operating ratios were included in the cost study.

While these nine switching roads handle a considerable volume of business other than intra district switching, it has also been shown that they handled the major portion

of intra district traffic in the study. The shippers' evidence concerning these roads has the value of being closely related to the District and to the traffic in question.

The process of determining the proper rate or revenues to be collected by having only one known quantity, namely, the operating expense, and applying thereto a percentage or operating ratio, which, in itself, is a very uncertain quantity, is a very unsatisfactory and haphazard method. The correct and complete proof which the carriers should have presented in this case would include proof of the fair value of the property used and useful in handling the District business, proof of a fair rate of return which they should earn on the said property, proof of taxes actually paid on said property and proof of the proper operating

expenses in connection with said business. We recognize that the preparation of such proof would entail considerable work on the part of the carriers; however, we do not believe that fact is an adequate reason to justify the carriers in presenting only testimony as to an operating ratio, based upon operations in the country as a whole, involving not only this territory but other locations where conditions are very different, and including not only freight, but passenger, mail, express and all other classes of railway operations.

COMMODITIES

Evidence was submitted by various parties interested in the transportation of particular commodities, with the purpose of securing a continuation of present rates on those commodities. Some of the contentions advanced in connection with a number of the commodities moving in large volume, are hereinafter set forth:

GRAIN. At present wheat, corn, oats and other grains move in large part within the District on exceptions under the Lowrey basis, and it is proposed by the carriers to place grain generally upon the Lowrey basis, such proposal growing out of the general investigation of switching rates instituted by the Interstate Commerce Commission under its Docket 19610. The tariffs under suspension by this Commission do not propose to place the rates on grain and grain products on the Lowrey basis, but are under consideration here solely because of the general investigation ordered by the Interstate Commerce Commission.

It appears from the evidence that based upon the traffic analysis of September, 1926, the principal grain movement consists of corn in two-line hauls, both interstate and intrastate in Illinois, although there is a substantial intra district movement of all grains, in one, two and three-line hauls. This greater movement of corn may be attributed to the extensive manufacture of corn products within the

District, and to the facilities for drying wet corn for market with which the district is said to be especially equipped.

The testimony of the shippers generally concerned the manner of merchandising grain, total amount of available grain and storage facilities around Chicago, the amount of grain in storage at various dates, and the so-called reciprocal and proportional switching charges on inbound and outbound movements at Chicago, compared with similar charges in various other switching districts such as St. Louis, Missouri, Minneapolis, Minnesota, Kansas City, Missouri, and Omaha, Nebraska. This evidence clearly indicates the importance of Chicago as a primary grain market. The carriers contend that charges per car in other switching districts, brought into comparison by the shippers, are

either so-called "reciprocal" switching charges which are not in issue, or proportional charges which are incomplete unless combined with other charges of that class to make the through cross-town charge; and that the shippers' comparison is unaccompanied by any showing of similarity of conditions.

The principal witness for the grain interests urged that the charges for the intra district switching of grain within the District should be absorbed by the carriers—at least to the extent of one intra district switching service. The evidence does not show that the line haul rates are adequate to compensate the carriers for the additional switching service performed in the District; nor does it show that the intra district movement should be considered in the light of transit arrangements or as so-called "reciprocal" switching as suggested by the shippers' witness. They constitute distinct services and justify distinct charges when rendered.

The extent of the cross-town switching of grain, including

the intra plant movement, was shown to be as follows:

In 1921	20,851 cars
In 1922	14,745 cars
In 1923	14,586 cars
In 1924	19,672 cars
In 1925	25,891 cars
In 1926	26,865 cars
In 1927	18,655 cars

The record shows that grain generally loads much heavier than the 60,000 pound minimum usually exacted on shipments in the District. It is contended that the present rates on grain which have always been less than the Lowrey basis in the District, are related to the entire line haul grain rate

structure and the competition with other grain markets and milling points, and that the present rates, if not absorbed, should be permitted to remain in effect.

Coke. The coke interests were represented solely by the By-Products Coke Corporation of Chicago, with plant located at South Chicago, Illinois, which claims to be the largest producer of coke for the general market in the United States. This company carbonizes 1,500,000 tons of coal each year, and produces 1,250,000 tons of coke. In addition it owns and operates a blast furnace in South Chicago. Yard tracks and scales are owned and maintained by the industry at its coke plant. The Chicago Short Line performs the switching at that point.

During the year 1926 the coke plant shipped 28,816 carloads of coke, light oil, ammoniacal liquor, and coal tar, of which 26,948 carloads were coke. The coke was distributed as follows: 5050 carloads in one-line hauls less than one mile in length; 12,099 in two-line hauls; and 9799 in three-line hauls. The one-line hauls were made in private cars for which no allowance is made. Of the two-line hauls 6120 cars were destined to points outside of the District. The carriers submitted traffic statistics for the month of September, 1926, only, but measured by that month

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there must be a considerable movement of coke in addition to that of the By-Products Corporation. The carriers show for that month a total movement of 6716 cars. While the shipper herein named estimates that 90% of its coke moves in Illinois intrastate traffic, the carriers' statistics show that about 58% of the total movement of coke in the District is interstate. The carriers' statistics for September, 1926, show that the distance of one-line hauls ranges from 1.3 to 11.97 miles; two-line hauls 2 to 56.9 miles; and three-line hauls 8.5 to 37.4 miles. The following shows the aver-

age distances of those hauls and the weighted average revenue at present and proposed Lowrey basis of rates:

Interstate				Illinois				Indiana			
		Revenue Per Ton				Revenue Per Ton				Revenue Per Ton	
Cars	Average Distance	Present	Proposed	Cars	Average Distance	Present	Proposed	Cars	Average Distance	Present	Proposed
	(miles)	(cents)	(cents		(miles)	(cents)	(cents)		(miles)	(cents)	(cents)
					One-Line						
3	(1) 7.0	50	60	55	3.95	50	60	....	.....	....	....
3374	(1) 11.97	60	60	.....	.....	.....	.....	548	(1) 11.97	60	60
37	(1) 11.97	12	12	478	5.94	40	40	....	.....	....	....
					Two-Line						
138	23.84	50	70	1239	7.30	50	70	....	.....	....	....
12	46.82	73	87	14	12.79	71	88	....	.....	....	....
277	(1) 12.70	45	45	.....	.....	.....	.....	....	.....	....	....
					Three-Line						
....	.....	....	....	410	25.95	60	80	....	.....	....	....
....	.....	....	....	78	28.24	76	92	....	.....	....	....
....	.....	....	....	53	10.29	50	71	....	.....	....	....
3841				2327				548			

(1) Actual Distance as shown in Exhibit 11-A.

Evidently the heaviest movement is in one-line interstate hauls at the rate of 60 cents per ton for a haul of 11.97

miles, which is ten cents over the present Lowrey basis. No increase is proposed in that rate. There is a substantial one-line movement in Indiana and a heavy three-line movement in Illinois. The Indiana one-line movement is on a rate ten cents per ton above the present Lowrey basis. This leaves a substantial tonnage now moving on rates less than the present Lowrey basis with respect to which no change is proposed, together with a somewhat smaller tonnage which now moves on rates considerably over the present Lowrey basis, respecting which an increase is proposed. Doubtless some of the latter tonnage moves over the E. J. & E. and some deliveries by the Chicago and North West-

ern Railway and Chicago, Milwaukee, St. Paul and Pacific in the so-called outer district, for which an arbitrary of one-half cent per hundred pounds is added to the Lowrey rate.

The By-Products Coke Corporation subscribes to a uniform basis of rates, provided no increase is made in the present rates, admitting that an additional charge for the use of team tracks would be justified. The testimony in protest of higher rates refers to an increase of approximately $170,000 per annum in its transportation charges on coke alone; to the use of private cars in the one-line hauls for which no allowance is received; and to certain elements of service contained in the carriers' costs which the shippers claim should be eliminated. The movement in private cars is Illinois intrastate and at rates which are ten cents per ton under the Lowrey basis.

A witness for the By-Products Coke Corporation testified that a large portion of the cars which they send out under load, whether for line haul or switching movement, are cars which have previously come into the plant under load.

PACKING AND PACKING-HOUSE PRODUCTS. The testimony submitted on behalf of the packing industry dealt almost exclusively with the short hauls within the Chicago Stock Yards District over the Chicago Junction Railway which

line is divided into districts. Within those districts are located plants between which there are movements of certain commodities. The Chicago Junction Railway was not one of the cost-study roads. Its local or single line movements are all Illinois intrastate and range from 200 feet to a mile. Most of the movements are in privately owned refrigerator cars, usually loaded in both directions. The evidence shows that the number of cars owned by the Chicago Junction Railway is inadequate to handle the business and

without the use of those private cars the carrier would necessarily incur a per diem charge of $1.00 for the use of foreign cars. The following table compiled from an exhibit of record shows the present charges applying on the Chicago Junction Railway for both inter district and intra district movement:

Chicago Jct. Cars Loaded		Chicago Jct. Cars Empty		Private Cars Loaded		Private Cars Empty	
Intra Dist.	Inter Dist.	Intra Dist.	Inter Dist.	Intra Dist.	Inter Dist.	Intra Dist.	Inter Dist.
$7.15	$15.00*	$3.15	$4.50	$3.15	$12.00	$3.15	$4.50

*Minimum 60,000 pounds at 2.5c per cwt.

Tariffs have not been filed by the Chicago Junction Railway proposing increases in the rates here under consideration, and therefore the measure of these rates is not before this Commission.

SAND, GRAVEL, AND CRUSHED STONE. These commodities are almost invariably classed together for rate-making purposes. The producers of crushed stone assert that gravel is produced and shipped largely from nearby points outside of the District which are located on trunk lines able to make local delivery and that the points of production of crushed stone within the District are located on switching roads which require a connecting line delivery. It is shown that gravel now moves from nearby points outside of the District on single-line rates of 65 cents per ton, while the crushed stone referred to moves within the District on two-

line switching rates of 50 cents per ton, which under the proposed adjustment would be increased to 70 cents per ton, resulting in a spread of five cents over the gravel rates.

A witness for the crushed stone producers stated that the cost to produce a ton of stone is two to three and a half times greater than the cost to produce a ton of gravel.

Exhibits 40 and 41 introduced in evidence indicate that the average per-car weight of crushed stone within the District for the years 1925 and 1926 was 53.74 and 53.47 tons respectively. Other exhibits of record indicate that the preponderance of the movement of crushed stone is Illinois intrastate movement.

The producers of crushed stone within the District are in accord with the general plan of a uniform rate basis and are not in favor of a zoning plan, due, as alleged, to the discrimination that generally results therefrom. It is suggested, however, that if there is any change to be made in the present rates on crushed stone, the following basis be adopted:

Weight (pounds)	One-Line (per car)	Two-Line (per car)	Three-Line (per car)
60,000	$12	$15	$18
80,000	16	20	24
100,000	20	25	30

The adoption of the foregoing suggestions would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present one-line charge and decreases in all charges under the proposed basis.

Some general statements were made by the interested shippers of these commodities showing the availability of present and potential transportation by water within the District, in competition with transportation by rail, and the stimulation of delivery by motor trucks in the event of an increase in the rail rates.

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The producers of sand which is brought into the District for distribution, submitted testimony of a character somewhat similar to that submitted by the producers of crushed stone.

LUMBER. The Chicago Retail Lumber Dealers Association representing 135 lumber yards out of a total number of approximately 258 in the District, submitted testimony to the effect that the present rates and a uniform rate basis are satisfactory to its members. Lumber generally moves on the Lowrey basis, and under the tariffs filed in this proceeding it is proposed to increase the rates to 3, 3½ and 4 cents per hundred pounds, respectively, for one- two and three-line hauls. These shippers urge that the present rates be retained and state that from 4000 to 5000 carloads of lumber per year, are switched within the District, but that 80% of the entire lumber movement is by truck. It is contended that a still larger tonnage will move by truck if the present rates are increased. It is also contended that a substantial number of carload shipments of lumber does not load to the minimum weight of 60,000 pounds, which has the effect of increasing the actual freight cost per hundred pounds.

CORN PRODUCTS. This testimony was presented by the Corn Products Refining Company of Argo, Illinois, and the American Maize Produes Company of Roby, Indiana, both located within the District. The principal products of corn are starch, syrup, sugar, oil, gluten feed. and meal. The Corn Products Refining Company owns and maintains seventeen miles of track, representing an investment of $630,000, and the American Maize Products Company three miles of track, representing an investment of $120,000, within their respective plant enclosures. These facilities are used both for line-haul and intra district switching operations. with the former predominating. In opposition to any increase in the rates, these producers show that the greater part of their shipments within the District weigh

less than the minimum of 60,000 pounds, which results in the payment of average freight charges from six to nine

mills per hundred in excess of the rates now in effect. This is not due to the inability of observing the minimum in physical loading, but is done to meet the competition resulting from the lower minima of 36,000 and 40,000 pounds, applicable in connection with the road haul movements.

These producers contend that transit rates should be published on corn in, and the products out, destined to points in the District, with provision for the absorption of switching charges. They assert that switching charges are absorbed at St. Louis, Missouri, and East St. Louis, Illinois, on the products of corn milled at those points, and on sugar out of storage at Chicago for delivery in the District, and which originates on the Chicago and North Western and connections west of the Mississippi River. Comparisons were also made of the switching charges at Chicago with the charges within other switching districts such as Buffalo, New York, Detroit, Michigan, Cincinnati, Ohio, and Boston, Massachusetts, but no showing was made of comparative conditions which is required in order to make the comparisons of value. These shippers contend that lower rates should prevail in the District because of the greater density of switching traffic. In a large measure, the testimony involved transit privileges and line-haul rates alleged to be prejudicial to Chicago and preferential to other remote points.

Tar Products. This item embraces roofing and paving tar, paving pitch and some creosote oils. The products move almost entirely in private tank cars, for which no allowance is made. The record indicates that the tar products generally move on the full Lowrey basis. The Chicago & Illinois Western publishes a one-line rate of $9.00 per car for the comparatively short haul applicable on Illinois intrastate traffic. It handles five or six cars a

day on that rate. That carrier is desirous of continuing the rate of $9.00 rather than be deprived of the business which, it was testified, would be diverted to water transportation if the rate is increased.

The use of private tank cars for the transportation of tar products which results in the elimination of per diem charges and costs to carriers for maintenance of equipment and other costs incidental to ownership was especially stressed. Comparison was made of the average earnings of $22.50 on certain loaded tank cars of coal tar with the approximate cost of $11 for handling the car in a three-line movement. It does not appear, however, that the cost for the empty movement was considered and ordinarily the use of private tank cars for particular commodities exclusively involves 100% empty movements.

IRON AND STEEL. Testimony was introduced by witnesses representing steel industries located within the District at Indiana Harbor, Indiana, and East Chicago, Indiana, South Chicago and Grand Crossing, Illinois, and on behalf of the steel industries outside of the District located at Chicago Heights and Evanston, Illinois. The testimony referred generally to the influence of freight rates upon the original location of the steel industries within the District; to the history of those rates; and to such transportation factors as the volume and heavy loading of iron and steel billets, pig iron and scrap iron, which ordinarily are influential in obtaining reduced line-haul rates, and the fact that shippers in Central Freight Association territory can ship iron and steel to the District on a minimum of 36,000 pounds, while it is necessary to pay on a 60,000 pound minimum on shipments moving within the District so cited.

Rates in effect at other switching districts were cited by

the steel interests, which it is contended moves considerable traffic and indicates such rates are lower than the District rates. Exhibit No. 19 was introduced in evidence showing the movement of 100 cars. This exhibit shows that the average detention from the time the cars were set for loading at the plant until they were released was 4.7 days. From this showing it is contended that it is clear that there is no congestion in the District, evidenced by the prompt handling of the cars.

The witness introducing Exhibit No. 19 desired to have the Lowrey basis of rates continued with certain exceptions to take care of special movements, and contends that any increases in the switching rates will divert a large volume of tonnage to the highways.

It is further shown that most of the outbound tonnage from the steel mills is loaded in cars which were received under load.

Railway Equipment. Freight, passenger, work and other equipment on its own wheels is generally hauled within the District at a per car rate, but rates per hundred pounds are published by certain carriers. The charges for this service differ widely, and rates are not upon the Lowrey basis. It is the desire of the carriers as well as the manufacturers to continue to move this equipment on the excepted rates. A number of the carriers contemplate no change in these rates. In instances where increases are proposed, the increased rates will continue to be upon a per car basis, or upon a weight basis lower than the Lowrey basis. Railroad equipment was not included in the carriers' cost study. It appears that new cars frequently move in train lots directly from the yards of the car companies to connecting line purchasing the car.

OTHER COMMODITIES. Testimony similar to that already discussed was presented in connection with brick, building tile, coal and coke, and various other commodities. These commodities move within the District in carrier equipment, except in the case of some coal and coke shipments.

EX-LAKE TRAFFIC. Switching rates on Ex-Lake traffic moving directly or indirectly between docks and industries within the District are generally higher than on ex-rail traffic. The record indicates that at various times the tariff provision excluding ex-lake traffic has been withdrawn by certain carriers and subsequently reinstated. Under the proposed tariffs certain of the carriers have withdrawn the restriction. The present switching rates on ex-lake traffic range from 60 to 100% higher than rates on corresponding ex-rail traffic. The proposed rates over the lines of carriers which do not intend to withdraw the restriction would range from 43 to 100% higher on ex-lake traffic than on corresponding ex-rail traffic.

The shippers through the Chicago Association of Commerce urge that all restrictions be removed from ex-lake traffic and that it be accorded the same level of rates as ex-rail traffic. It is stated that thousands of dollars have been spent to increase the facilities for the handling of lake traffic and that the continuance of the rule excepting ex-lake traffic will greatly retard the development of Chicago as a port, and minimize the benefits resulting from the improvements in the water service.

As hereinbefore stated, under the proposed tariffs certain of the carriers have withdrawn the restriction against the application of the Lowrey basis of rates on ex-lake traffic. There is nothing in the record to indicate that the carriers proposing to eliminate this restriction should not

be permitted to do so but there is sufficient evidence to indicate that the removal of this restriction is desirable.

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Although there is no proposal before this Commission with reference to other carriers, defendants herein, no objection should be made to the proposals under suspension with reference to ex-lake traffic whereby certain carriers propose to remove their restriction against the application of the Lowrey basis of rates.

RATES BETWEEN CHICAGO HEIGHTS, ILLINOIS, AND CHICAGO SWITCHING DISTRICT

Chicago Heights was founded about 1890 as an industrial center adjacent to the Chicago Switching District. It now has a population of approximately 30,000, with about 85 industries. During 1927, 15,251 carloads were moved between this point and the District. It is 26.6 miles south of the Chicago Station on the Chicago and Eastern Illinois Railway and 3.7 miles beyond the southern boundary of the Chicago Switching District. Local switching at Chicago Heights is performed by the Chicago Heights Terminal Transfer Railway which is solely a switching carrier serving 83 of the industries located at that point. Between Chicago Heights and the District the movement is performed as switching by the Baltimore and Ohio Chicago Terminal, and the Chicago and Eastern Illinois jointly with its subsidiary, the Chicago & Western Indiana.

Prior to 1900 various rates were in effect between the two districts. In 1900 a rate of $5 per car was established by agreement between the Chicago Heights Terminal Transfer and the Chicago and Eastern Illinois Railway. Since 1907 the inter district rates generally have been maintained upon a parity with the rates within the Dis-

trict. This is illustrated by the following chronological table beginning in 1907, compiled from the exhibits of record:

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	Per Car (1) Minimum 60,000 pounds			Per Hundred Weight Minimum 60,000 pounds				
	1907	1908	1909	1911 cts.	1918 cts.	1920 cts.	1922 cts.	Present cts.
Chicago Heights to/from Chicago Switching District	$5.50	$5.50 to 8.00	$5.50 to 8.00	1.5	2.0	3.0	2.5	2.5
Within Chicago Switching District	$5.50 to 13.00	$5.50 to 13.00	$5.50 to 10.50	1.5	2.0	3.0	2.5	2.5

(1) Excess 18.3 cents per ton.

Both the Chicago Heights shippers and the carriers directly serving that point urge that the existing rate parity between Chicago Heights and the District be maintained, and that Chicago Heights be included within the District. The proponents, for including Chicago Heights in the District, compared it with industrial centers suburban to Chicago which are now within the District, namely, Harvey, Illinois, Indiana Harbor and Hammond, Indiana. Witnesses testified that Chicago Heights has grown from a town of approximately 5000 to a prosperous city of approximately 30,000; that the growth has been largely due to the existence of the District and that the future existence of Chicago Heights as an industrial community depends very largely, if not entirely, upon the continuation of this basis of rates, and any disturbance of this relationship will have an injurious effect upon the industrial and civic welfare of Chicago Heights. One of the shippers' exhibits shows that the earnings on various commodities moving in line-haul service for so-called short-haul dis-

tances ranging from 21 miles to as high as 250 miles, to be from $10.50 to $24.00 per car. It appears that with few exceptions the shipments represented one-line movements. These earnings are compared with the per car earnings under the proposed rates of $18, $21 and $24 for the one, two, and three or more line movements.

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The carriers presented evidence relative to cost and certain statistics pertaining to traffic between Chicago Heights and the District, which evidence was prepared in the same manner as that submitted for the District.

The costs claimed by the carriers for the Chicago Heights traffic were 2.5, 2.9 and 2.5 cents per hundred pounds for two-line, three-line and four-line hauls, respectively. Most of the carriers' claims of understatement of cost in their original figures (Exhibit 7A) and the shippers' claims of overstatement were centered about the district traffic without much consideration of the Chicago Heights business. Nevertheless the record shows that the costs for the Chicago Heights traffic were prepared in the same general manner as the District costs. They are therefore subject to the same general objections as the District costs.

As illustrations, we may point to the increased cost of winter operations, the cost of transporting company fuel, the reductions on account of separate engine-hour costs for switching at industries and reductions in car detention costs. These are some of the general criticisms of both carriers and shippers which also affect the Chicago Heights costs.

In addition to the foregoing general criticisms, it appears that the costs include an item of $6.00 for every car originating or terminating on the Chicago Heights Ter-

minal Transfer Railroad, which is the amount the other carriers pay the said railroad for handling the car. This is a division of revenue and does not represent cost. The actual cost should have been determined on the said road and combined with the costs of the other carriers. The evidence shows that the average cost per loaded car handled by this road was $3.02 in 1920 and $4.22 for the first seven months of 1923.

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Since the record does not show how the Chicago Heights cost data is affected by the many general criticisms which are also applicable to this study, it is not possible to determine the true costs of handling this traffic. Therefore, no justification has been shown for changing the Chicago Heights rates.

Desplaines, Illinois and Arbitrary Stations

DesPlaines, Illinois, is situated 16½ miles northwest of the city limits of Chicago, but within the outer zone of the District. It is a so-called "red line" station on the Minneapolis, St. Paul & Sault Ste. Marie Railway and the Chicago and North Western Railway from and to which no joint switching rates apply. Greenhouses are its principal industry from which flowers are shipped into Chicago. Over 900 cars of various commodities were received during 1927 from points within the District.

It appears that there are other flower growing centers within the District with which DesPlaines competes and which have the advantage of the District switching rates. The record is not clear as to why in the first instance, the District was extended to include stations such as Des Plaines without the application of the District rates in some instances and applying them in other instances with an arbitrary added.

The shippers urge that the entire outer zone of the District be granted the flat switching rates without the addition of arbitraries of one-half cent per hundred pounds generally, which now apply to and from so-called "green line" stations.

The carriers indicate that if the proposed rates on the all-commodity basis are found reasonable, they would not object to abolishing the arbitraries and would apply the all-commodity rates to the outer zone stations.

The tariffs under suspension by the Illinois Commerce Commission in this proceeding do not propose to make any change in the present arbitraries in effect at stations in the northwest side of the District; nor is it proposed to extend the benefit of switching rates to stations such as

DesPlaines, Illinois, where such rates are not now in effect. The issues here before the Commission are not sufficiently broad for it to order an elimination of the present arbitraries or a change in the rates to or from DesPlaines, Illinois.

GENERAL

Exhibit No. 97 shows the distribution of all cars moving in the District during the month of September, 1926, as between Illinois intrastate, Indiana intrastate, and interstate traffic. This exhibit shows that 53.3% of the total traffic moved Illinois intrastate, while the interstate movement represents 40.3%, and the Indiana intrastate movement but 6.4%. This illustrates the importance of the Illinois intrastate movement as compared with the interstate and the Indiana intrastate movement.

The relative length of haul of intrastate and interstate switching district cost study cars has been taken from Exhibit No. 97, with the following result:

	Intrastate		
	Illinois	Indiana	Interstate
One-line hauls—Average haul (in Miles)....	14.7	6.3	15.0
Two-line hauls—Average haul (in Miles)...	15.9	7.3	27.5
Three-line hauls—Average haul (in Miles)...	23.4	....	34.2

It will be noticed that the average one-line haul in miles for Illinois intrastate traffic is 14.7 miles, while the interstate haul is 15 miles; the average for the two-line hauls on Illinois intrastate traffic is 15.9 miles, while the interstate average is 27.5 miles; the average three-line haul for

Illinois intrastate traffic is 23.4 miles, while the interstate is 34.2 miles.

The record shows that at the beginning of this proceeding the carriers were generally in favor of the Lowrey basis of rates, and were of the opinion that they had been a decided advantage to both the shippers and carriers in the District.

Exhibit 64 was introduced at the May, 1928, hearing by Witness Galligan, showing the exceptions in which no changes were proposed. At that time no proposal had been made by the carriers with reference to the elimination of various exceptions to the Lowrey basis, but at the hearing in September, 1928, the carriers made an entirely different proposal and filed Exhibit 85 showing the rates to be increased, proposing to eliminate many other exceptions to the Lowrey basis. Tariffs have not been filed covering proposed increases in certain Illinois intrastate rates, and while those rates may be properly before the Interstate Commerce Commission in its Docket 19610, they are not before the Illinois Commerce Commission.

It is contended that the development of industry in the

District is due, in a large measure, to the cooperation of the carriers in the establishment of the Lowrey basis, which arose as a voluntary agreement between the carriers. It is further contended by the protestants that the destruction of the Lowrey basis or the establishment of prohibitive switching rates will greatly interfere with the development and expansion of the industrial district of Chicago, and that the disruption of business in such a fashion should not be permitted by the Commission on such a showing as the carriers have made in this proceeding.

It appears from the evidence that the Lowrey basis of switching rates has been of great advantage to both the shippers and carriers alike. The shippers are almost unanimously in favor of retaining the present system of Lowrey rates with exceptions thereto, and as hereinbefore

stated, at the beginning of this proceeding the carriers likewise proposed to continue many exceptions to the general basis, and admitted that such rates had been advantageous to both parties.

The protestants contend that if the proposed increases become effective, the charges resulting therefrom will, in many cases, nullify investments, compel the relocation of industries, and the substitution of highways or waterways for all rail movements. There is much evidence in the record to the effect that a substantial increase in switching rates in the District will result in the diversion of considerable additional traffic to the highways and to the waterways. The record shows that the District has many improved highways, making it possible for a large volume of tonnage to move expeditiously via trucks. An exhibit of record shows the navigable waters in the Chicago Dis-

trict. A number of witnesses testified as to the extent of present movement via the highways and waterways and the possibilities in case higher rates are put into effect. It appears clear that these competitors have already made important inroads upon the rail traffic in the District, and with the construction of additional public highways will, no doubt, absorb more of the business. We do not believe this to be an idle threat. A material increase in the present rates would, no doubt, divert traffic from the railroads, not only through the motor truck and barge competition, but by relocation of industries and other rearrangements, which would largely offset the revenue the carriers expect to receive from such increase.

As hereinbefore stated, this proceeding is the outgrowth of the decision of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation* v. *B. & O. R. R., supra.* No general investigation of the rates in the District was instituted by the Illinois Commerce Commission; therefore, since no switching rates,

other than those proposed in the suspended tariffs, are before this Commission, no action other than passing upon the reasonableness of the proposals, based upon the evidence submitted, can be taken by this Commission.

The review of a rate adjustment so important to an industrial center, such as Chicago, cannot be taken lightly by the Commission. The welfare of the carriers and the growth of industry at Chicago are closely related. The traffic moving within the District reflects the development of manufacturing and of other enterprises within the District, and as this traffic increases, the line-haul traffic of the carriers also increases, as in many instances the intra district movements of raw material result in subsequent line-haul movements of finished products.

FINDINGS

The burden of proving that the increased charges proposed are just, reasonable and lawful is upon the respondent carriers. Carriers depend upon the cost study as their sole justification for the proposed increases in switching rates. The record is entirely lacking in traffic evidence upon which the Commission could find that the proposed rates are justified.

It is contended by the shippers that the cost study made in this proceeding must be disregarded as it constitutes no fair basis of evidence as to what the service costs the carriers. It is further contended that the study ignores the fundamental fact that switching is performed as an accessorial service to the primary purpose of road-haul service and that it should not bear the total burden of delays caused by the road-haul trains.

A decision of the Interstate Commerce Commission was referred to by the shippers in the case involving *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216, where the

Coverston-Saur formula for arriving at costs was involved, wherein the Commission said:

> "Like others, the one before us contains some flaws and irregularities, but there is nothing surprising about the cost per-car shown. They are such as we would expect to find in a large terminal district. Upon the whole we see no reason for not taking the respondent's cost figures as indicating that switching in the St. Louis District is a rather expensive service. *A cost study is ordinarily little more than a very rough indication, and even if unusually comprehensive and exact, it should not be the sole basis for fixing rates. The value of the service to the shipper, and many practical considerations, may be of equal or greater importance.*"

We are of the opinion that the cost study upon which the carriers have relied in these proceedings as a basis for increasing their rates is so inaccurate that it is not a reliable guide as to the actual costs of the services rendered.

After giving full weight and consideration to the evidence presented in these proceedings, we are of the opinion that it is clearly insufficient to justify the increased rates proposed or any change in the present rates.

The Commission having considered the evidence both oral and documentary and statements of counsel and being fully advised in the premises is of the opinion and finds:

(1) That the traffic included in the cost study moving over certain railroads selected by the carriers is not representative of the intra-district traffic as a whole;

(2) That even approximate costs of handling the study cars cannot be determined from the present record;

(3) That the record is entirely silent as to the costs of handling the "other" cars not included in the study;

(4) That the record does not contain sufficient evidence to determine the proper amount to be allowed for taxes and return on investment;

(5) That the proposed changes in rates involved in these proceedings have not been justified;

(6) That the schedules filed by the Illinois carriers purporting to establish revised rates, effective April 30, June 1, and July 8, 1927, and in so far as they propose to advance the rates on brick, tile and articles taking the same rates, effective May 5, 1927, applicable to Illinois intrastate traffic, under suspension in these proceedings, should be permanently cancelled, annulled and set aside on or before November 10, 1931;

(7) That the prayer of the complainant in Docket 17513, *Illinois Slag & Ballast Company versus The Chicago, West Pullman and Southern Railroad Company, et al.*, should be denied, and the cause dismissed and stricken from the Docket of the Commission.

IT IS THEREFORE ORDERED that Supplement No. 30 to Tariff No. 10265-E, Supplement No. 26 to Ill. C. C. No. 288, of The Atchison, Topeka and Santa Fe Railway Company; Local and Proportional Freight Tariff No. H-2687-0, Ill. C. C. No. WL-675, and Local Freight Tariff No. C. T. H. 388-G, Ill. C. C. No. WL-676, of The Baltimore and Ohio Railroad Company; Supplement No. 1 to Tariff I. P. U. C. No. 94, Supplement No. 1 to Tariff Ill. C. C. No. 104, Supplement No. 1 to Tariff Ill. C. C. No. 107, Tariff Ill. C. C. No. 182, Tariff Ill. C. C. No. 183, Item No. 6, Tariff Ill. C. C. No. 184, and Item No. 6, Tariff Ill. C. C. No. 185, of The Baltimore and Ohio Chicago Terminal Railroad Company; Supplement No. 1 to Tariff No. 131, I. P. U. C. No. 73, Supplement No. 1 to Joint Tariff No. 137, Ill. C. C. No. 92, and Local and Proportional Freight Tariff No. 122-P, Ill. C. C. No. 115, of The Belt Railway Company of Chicago; Supplement No. 45 to Tariff No. 2-I, Ill. C. C. No. 716, of The Chicago and Alton Railroad Company, William W. Wheelock and William G. Bierd, Receivers; Tariff Ill. C. C. No. 18, of the Chicago and Calumet River Railroad Company; Supplement No. 23 to Freight Tariff No. 95-A, Ill. C. C. No. 74, Supplement No. 23 to Freight Tariff No. 235-A, Ill. C. C. No. 112, Supplement No. 11 to Freight Tariff No. 325-B, Ill. C. C. No. 128, Supplement No. 29 to Freight Tariff No. 500-B, Ill. C. C. No. 135, and Supple-

ment No. 4 to Freight Tariff No. 175-E, Ill. C. C. No. 153, Supplements Nos. 22 and 23 to Freight Tariff No. 775, Ill. C. C. No. 43, Supplement No. 1 to Freight Tariff No. 850-A,

Ill. C. C. No. 166, and Supplement No. 2 to Freight Tariff No. 600-B, Ill. C. C. No. 167, of the Chicago and Eastern Illinois Railway Company; Supplement No. 30 to Tariff 516-A, Supplement No. 29 to Ill. C. C. No. 2-A, Supplement No. 14 to Tariff G. F. D. 517-A, Supplement No. 13 to Ill. C. C. No. 3-A, Supplement No. 15 to Tariff G. F. D. 517-A, Supplement No. 14 to Ill. C. C. No. 3-A. Supplement No. 8 to Tariff G. F. D. No. 520-D, Supplement No. 7 to Ill. C. C. No. 12-A, Supplement No. 9 to Tariff G. F. D. No. 520-D, Supplement No. 8 to Ill. C. C. No. 12-A, Supplement No. 5 to Tariff G. F. D. No. 516-B, Ill. C. C. No. 13-A, and Joint Freight Tariff G. F. D. 524-A, Ill. C. C. No. 14-A, of the Chicago and Illinois Western Railroad; Supplement No. 14 to Tariff G. F. D. No. 5678-Q, Supplement No. 12 to Ill. C. C. No. 492, and Supplement No. 5 to Tariff G. F. D. No. 12575-K, Supplement No. 3 to Ill. C. C. No. 506, of the Chicago and North-Western Railway Company; Local and Proportional Freight Tariff No. 18-N, Ill. C. C. No. 46, of the Chicago and Western Indiana Railroad Company; Supplement No. 7 to Tariff G. F. O. No. 49, Supplement No. 6 to Ill. C. C. No. 45, of the Chicago, Aurora and Elgin Railroad Company; Supplement No. 17 to Tariff G. F. O. No. 1921-I, Ill. C. C. No. 1277, of the Chicago, Burlington & Quincy Railroad Company; Supplement 15 to Tariff 15-G, Supplement 14 to Ill. C. C. 134, Supplement 20 to Tariff 30-G, Supplement 17 to Ill. C. C. 135, and Supplement 3 to Tariff 12-H, Ill. C. C. 144, of the Chicago Great Western Railroad Company; Tariff Ill. C. C. No. 13 of the Chicago Heights Terminal Transfer Railroad Company; Freight Tariff No. 26-F, Ill. C. C.-C. J. No. 31 and Freight Tariff No. 22-K, Ill. C. C.-C. J. No. 32 of the Chicago Junction Railway, the Chicago River and Indiana Railroad Company, lessee, Supplement No. 23 to Tariff G. F. D. No.

10740-H, Supplement No. 25 to Ill. C. C. No. 236, of the Chicago, Milwaukee and St. Paul Railway Company, H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; Tariff No. 59-J, Ill. C. C. No. 72, of The Chicago River and Indiana Railroad Company; Supplement No. 17 to Freight Tariff No. 27474-H, Supplement No. 16 to Ill. C. C. No. 419, and Supplement No. 54 to Freight Tariff No. 21432-J, Supplement No. 46 to Ill. C. C. No. 440, Item No. 296, Freight Tariff No. 21432-K, Ill. C. C. No. 493, of The Chicago, Rock Island and Pacific Railway Company; Supplement No. 1 to Tariff No. 209, Ill. C. C. No. 22, Switching Tariff No. 28, Ill. C. C. No. 29, Joint Freight Tariff No. 207-B, Ill. C. C. No. 31, Joint Commodity Freight Tariff No. 208-C, Ill. C. C. No. 32, Joint Freight Tariff No. 201-G, Ill. C. C. No. 33, and Joint Freight Tariff No. 201-H, Ill. C. C. No. 34, of the Chicago Short Line Railway Company; Supplement No. 10 to Tariff G. F. D. No. 90, Ill. C. C. No. 56, Joint Freight Tariff G. F. D. No. 123, Ill. C. C. No. 88, Joint Freight Tariff No. 124, Ill. C. C. No. 89, and Joint Freight Tariff G. F. D. No. 125, Ill. C. C. No. 90, of the Chicago, West Pullman and Southern Railway Company; Supplement No. 16 to Freight Tariff No. 56-I, Supplement No. 12 to Ill. C. C. No. 434, Supplement No. 15 to Freight Tariff No. 4-D, Supplement No. 10 to Ill. C. C. No. 484, Supplement No. 6 to Freight Tariff No. 15-H, Supplement No. 5 to Ill. C. C. No. 508, and Freight Tariff No. 40-E, Ill. C. C. No. 515, Supplement No. 29 to Freight Tariff No. 46-O, Supplement No. 22 to Ill. C. C. No. 438, and Freight Tariff No. 53-H, Ill. C. C. No. 514, of the Elgin, Joliet and Eastern Railway Company; Supplement No. 20 to Local Freight Tariff No. 452-F, Supplement No. 16 to Ill. C. C. No. 114, of the Erie Railroad Company; Tariff No. 476-A, Ill. C. C. No. 95, and Tariff No. 520-L, Ill. C. C. No. 96, of the Grand Trunk Railway System; Tenth Revised Page 10,

Sixteenth Revised Page 11, Twentieth Revised Page 15, Twelfth Revised Page 19, Twenty-fifth Revised Page 21,

and Eighth Revised Page 21-A, of Tariff No. 1-C, I. P. U. C. No. A-1, Supplement No. 103 to Tariff 13321-F, Supplement No. 96 to Ill. C. C. A-875, Supplement No. 8 to Tariff 5167-T, Supplement No. 6 to Ill. C. C. No. A-973, and Freight Tariff 13321-G, Ill. C. C. No. A-1029, of the Illinois Central Railroad Company, Supplement No. 9 to Tariff G. F. D. No. 77, Ill. C. C. No. 40, Joint Freight Tariff G. F. D. No. 99, Ill. C. C. No. 69, Joint Freight Tariff G. F. D. No. 100, Ill. C. C. No. 70, Joint Freight Tariff G. F. D. No. 101, Ill. C. C. No. 71, and Joint Freight Tariff G. F. D. No. 102, Ill C. C. No. 72, of the Illinois Northern Railway; Tariff G. F. D. No. 385-L, Ill. C. C. No. 228, Tariff G. F. D. No. 325-G, Ill. C. C. No. 229, Tariff G. F. D. No. 407-F, Ill. C. C. No. 230, Tariff G. F. D. No. 231-U, Ill. C. C. No. 231, and Tariff G. F. D. No. 493-A, Ill. C. C. No. 233, of the Indiana Harbor Belt Railroad Company; Local Freight Tariff No. 1-D, Ill. C. C. No. 14, of the Manufacturers' Junction Railway Company; Supplement No. 52 to Tariff G. F. D. No. 9271-K, Supplement No. 31, to Ill. C. C. No. 513, Supplement No. 45 to Tariff G. F. D. No. 9251-H, Supplement No. 26 to Ill. C. C. No. 514, and Supplement No. 1 to Tariff G. F. D. No. 9512-G, Ill. C. C. No. 566, of the Michigan Central Railroad Company; Supplement No. 23 to Freight Tariff No. 225-A (G. F. D. No. 30260), Supplement No. 21 to Ill. C. C. No. 150, of the Minneapolis, St. Paul and Sault Ste. Marie Railway Company; Supplement No. 2 to Tariff Ill. C. C.-L. S. No. C-93, and Supplement No. 18 to Tariff I. P. U. C.-L. S. No. 514, of the New York Central Railroad Company; Tariff G. F. D. No. 26-M, Ill. C. C. No. 113, of the New York, Chicago and St. Louis Railroad Company; Supplement 29 to Tariff Ill. C. C. F-397 and Tariff Ill.

C. C. F-447, of the Pennsylvania Railroad Company; Tariff G. F. D. No. 1-D, Ill. C. C. No. 21, Joint Freight Tariff G. F. D. No. 10-C, Ill. C. C. No. 22, and Joint Freight Tariff G. F D. No 11-B, Ill C. C. No. 23, of the Pullman Railroad Company; Supplement No. 24 to Tariff No. D-7181, Sup-

plement No. 23 to Ill. C. C. No. 593, Tariff No. P-10936, Ill. C. C. No. 743, and Tariff No. E-16505, Ill. C. C. No. 745, of the Wabash Railway Company; Supplement No. 8 to Tariff No. 20-P, Supplement No. 6 to Ill. C. C. No. 33, Tariff No. 21-M, Ill. C. C. No. 37, Freight Tariff No. 10, Ill. C. C. No. 38, Freight Tariff No. 11, Ill. C. C. No. 39, and Tariff No. 23-M, Ill. C. C. No. 40, filed by C. W. Galligan, Agent, and all other tariffs or schedules, not herein specifically designated, in so far as they purpose to establish revised rates effective April 30, 1927, June 1, 1927, and July 8, 1927, and all reissues thereof, applicable to Illinois intrastate traffic, under suspension in Docket 17250, First, Second and Third Supplementals, are hereby required to be permanently cancelled, annulled and set aside on or before November 10, 1931.

It Is Further Ordered that Items Nos. 1 and 3 of Tariff Ill. C. C. No. 185 of The Baltimore and Ohio Chicago Terminal Railroad Company; Item No. 40-B, Supplement No. 22 to Freight Tariff No. 235-A, Ill. C. C. No. 112, and Items Nos. 51-A, 55-A, and 105-A, Supplement No. 19 to Freight Tariff No. 400-A, Ill. C. C. No. 125, of the Chicago and Eastern Illinois Railway Company; Supplement No. 35 to Joint, Local and Proportional Freight Tariff No. 1100-M, Supplement No. 34 to Ill. C. C. No. 734, of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Item No. 135-E, Supplement No. 71 to Tariff 383-L, Supplement No. 60 to Ill. C. C. No. A-747, of the Illinois Central Railroad Company; Item No. 45-A, Sup-

plement No. 11 to Tariff Ill. C. C.-L. S. No. 716 of The New York Central Railroad Company; filed to become effective May 5, 1927, and all reissues thereof, applicable to Illinois intrastate traffic, in so far as they propose to advance rates on brick, tile and articles taking same rates, under suspension in Docket 17269, are hereby required to be permanently cancelled, anulled and set aside on or before November 10, 1931.

IT IS FURTHER ORDERED that Docket 17513, complaint of the Illinois Slag and Ballast Company versus the Chicago, West Pullman & Southern Railroad Company, *et al.*, be, and the same is hereby denied, and the cause dismissed and stricken from the docket of the Commission.

By order of the Commission, at Springfield, Illinois, this 26th day of August, 1931.

(Signed) JULIUS JOHNSON,
Secretary.

17250, 17269, 17513

APPENDIX A

Chicago Switching District Defined

Beginning at a point on the shore of Lake Michigan, due north of Clarke Junction, Indiana; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Indiana); thence southwesterly and south just west of the Elgin, Joliet & Eastern to, but not including Ivanhoe, Indiana; thence southwesterly to and including Hessville, Indiana; thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Illinois; thence northwesterly west of the Pennsylvania (Logansport Division) to a point just south of Dolton, Illinois; thence southwesterly to a point just south of Homewood, Illinois; thence northwesterly just west of the Grand Trunk to a point just west of Blue Island, Illinois; thence north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Illinois; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Illinois; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Illinois; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west of Melrose Park, Illinois; thence west just south of the Chicago and North Western to and including the Proviso transfer yard of that company; thence north to Addison Street; thence east to a point just south and west of Godfrey yard on the Chicago, Milwaukee, St. Paul and

Appendix A (Continued)

Pacific, thence to a point just north of the Chicago, Milwaukee, St. Paul & Pacific; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie, to and including Des Plaines, Illinois; thence southeasterly just east of the Chicago and North Western Railway to the city limits of Chicago; thence east just north of the said city limits of the Mayfair cut-off of the Chicago and North Western; thence northeasterly just west of the Chicago and North Western to and including Greenwood Street station; thence southwesterly just east of the Chicago and North Western to the city limits of Chicago; thence east just north of the city limits to the east line of Chicago Avenue or Clark Street; thence northerly on the east line of Chicago Avenue 725 feet; thence east to the east line of Chicago, Milwaukee, St. Paul & Pacific; thence southeasterly to center line of Howard Street; thence easterly on the said center line of Howard Street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning.

APPENDIX H.

STATE OF INDIANA

PUBLIC SERVICE COMMISSION OF INDIANA

IN THE MATTER *of* The investigation and suspension of rates, charges, regulations and practices by common carriers for the transportation of freight within the Chicago switching district on Indiana Intrastate Traffic.	No. 8939 Approved August 26, 1931

Freight Rates—Chicago Switching District.

Proposed increased schedules found not justified and schedules now under suspension ordered permanently cancelled as of November 10, 1931.

Appearances:

J. N. Davis, J. R. Barse, P. F. Gault, E. A. Smith, D. P. Connell, Guernsey Orcutt, H. I. Allen, H. D. Sheean, and *Nelson Trottman* for railroads serving the Chicago Switching District; *Sherman A. Gillett* for Chicago & Northwestern Ry.; *J. H. Brown* for The Belt Railway Company of Chicago; *M. S. Connelly* for Pennsylvania Railroad; *K. L. Richmond* and *J. F. Connors* for Chicago & Eastern Illinois Railway Company; *T. F. Dooley* for Chicago & Calumet River Railroad Company; *R. C. Davidson* for Chicago, Rock

Island & Pacific Railway Company; *T. E. Bond* for Elgin, Joliet & Eastern Railway Company; *W. G.*

Wagner for Chicago, Burlington & Quincy Railroad Company; *F. C. Furry* for Illinois Central Railroad Company and Chicago & Illinois Western Railroad Company; *Guy A. Gladson* for Receivers, Chicago & Alton Railroad Company; *B. S. Lottenville* for Chicago Heights Terminal Transfer Railroad Company; and *C. W. Galligan* for Illinois Freight Association.

John F. Bonner for Minnesota Railroad & Warehouse Commission; *W. A. Anderson* for Railroad Commission of Wisconsin; *D. L. Kelley* for South Dakota Board of Railroad Commissioners; and *Claude L. Draper* for Public Service Commission, State of Wyoming.

Luther M. Walter for Chicago Shippers Conference Association and Chicago Association of Commerce; *C. E. Hochstedler* for Chicago Association of Commerce; *R. B. Coapstick* for Indiana State Chamber of Commerce; *J. S. Brown* and *H. J. Campbell* and *S. H. Benson*, for Board of Trade for the City of Chicago; *Frank B. Townsend* and *Lee Kuempel* for Minneapolis Traffic Association; *Fred S. Keiser* for Duluth Chamber of Commerce; *J. D. Humphrey* for Hammond Chamber of Commerce, Hammond Manufacturing Association, and others; *H. F. Sundberg* for Chamber of Commerce, Cedar Rapids, Ia.; *R. I. Pierce* for Terre Haute, Chamber of Commerce and Highland Iron & Steel Company; *Howard P. Roe* and *Ernest S. Ballard* for City of Chicago Heights, Ill.; *F. B. McElroy*, *C. B. Cardy* and *R. I. Pierce* for Manufacturers Association of Chicago Heights, Ill.; *L. G. Macomber* for

Detroit Board of Commerce; and *Ralph N. Newmann* for Lions Club of Des Plaines, Ill.

Murray N. Billings for Illinois Steel Company; *Henry C. Keene;* and *Harry C. Ames* for Grasselli Chemical Company; *W. J. Hammond* and *R. R. Flynn* for Inland Steel Company; *W. Y. Wildman* and *R. W. Ropiequet* for Illinois Coal Traffic Bureau; *George Patterson Boyle* for Illinois Slag & Ballast Company; *Walter Hayes* for Sears Roebuck Company; *H. R. Park* for Chicago Live Stock Exchange; *E. S. Gubernator, R. S. Waterbury* and *E. W. Glaesel* for Lehigh Portland Cement Company; *Robert J. McBride* and *Warren Burkhart* for Illinois Lumber & Material Dealers Association, Burgess Battery Company, Beloit Iron Works and Jos. F. Herman Company; *J. D. Forrest* and *G. H. Staat* for By-Products Coke Corporation; *Robert Hula* for Clayton Mark & Company; *W. M. O'Keefe* for Chicago Mercantile Exchange and Live Poultry & Dairy Shippers Association; *Herman Mueller* for St. Paul Association of Public & Business Affairs; *C. B. Cardy* and *W. F. Garman* for Manufacturers Association of Chicago and Stone Producers in Chicago Switching District; *J. W. McRae* for Pennoyer Merchants Transfer Company; *W. F. Coyne* and *W. R. Sanborn* for Lehigh Stone Company; *Quinn Morton* for C. L. Willey Company; *C. A. Shank* for National Brick Company; *W. M. Councill* for National Fireproofing Company; *H. H. Bascom* for Youngstown Sheet & Tube Company; *C. T. Stripp* for National Malleable & Steel Castings Company; *A. R. Miller* and *H. G. Brown* for Illinois Brick Company; *H. W. Robertson* and *H. H. Singer* for Sinclair Refin-

ing Company; *Burton H. Atwood* and *C. B. Ackerman* for Elmhurst-Chicago Stove Company; *J. L. Roberts* and *N. L. Shannon* for The Barrett Company; *Alfred*

S. Knowlton for American Tar Products Company and Chicago By-Product Coke Company; *Adam Bessolo, A. M. Cordell* and *Alfred S. Knowlton* for Standard Steel Car Company and subsidiaries; *T. W. Mackey* for The Western Shade Cloth Company; *Fred C. Rose* for Marsh and Truman Lumber Company; *John D. Ross* for General Chemical Company; *F. D. Porter* for S. Berkenstine Sons, Incorporated; *P. St. Pierre* for A. L. Randall Company and Dure Paper Products Company; *L. E. Whitney* for National Pickle Packers Association; *F. W. Rogers* for Flintkote Company; *M. H. Strothman* for Washburn Crosby Company; *Sam Frier* for Wholesale Sash & Door Association; *E. C. Wilmore* for Sefton Manufacturing Company; *C. D. Miller* for American Maize Products Company; *F. F. Grubbs* for Chapin & Company; *M. S. Allison* for Federal Cement Tile Company; *A. L. Dreher* for Hyman-Michaels Company; *F. M. Garland* and *A. M. Cordell* for Pressed Steel Car Company; *M. D. Perry* for Union Drawn Steel Company, Gary Screw & Bolt Company, and Pittsburgh Screw & Bolt Company; *R. D. Reeds* and *E. F. Pine* for Confectioners Traffic Association and E. J. Brach & Sons; and *A. E. Hueneryoger* for Confectioners Traffic Association and Zion Institutions & Industries; *R. E. Riley* for Chicago Brick Company, Chicago Brick Exchange, Lake Sand Corporation and L. Richard Company; *F. H. Belden* and *E. S. Huebner* for Marblehead Lime Company; *F. D. Wilder* for Chicago Railway Equipment Company; *R.*

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C. Livingston for Interstate Iron & Steel Company; The *F. C. Favor Paper Company* for Chicago Paper Association; *J. H. Kane* for Material Service; *T. P. Scanlon* for J. B. Inderreiden Company and Amber

Furniture Comany; *H. N. Williams* for Jewel Tea Company; *J. T. Dover* and *W. J. Brown* for McClintic-Marshall Construction Company; *E. W. Sieboldt* and *J. R. Van Slyke* for Roxana Petroleum Corporation; *A. E. Sicilia* for Chicago Wool Trade Association; *P. A. McFarlane* for Wisconsin Lime & Cement Company; *H. J. Meilahn* for J. J. Bradenoch Company; *H. F. Obermayer* for Stratton Grain Company and Quincy Elevator Company; *W. J. M. Lahl* for American Seating Company; *A. A. Adams* for Chicago Retail Lumber Dealers' Association and Edward Hines Lumber Company; *H. P. Kahl* for Sprague Warner Company; *Alfred E. Treen* for Illinois Slag & Ballast Company; *W. S. Short* for Seaman Paper Company and H. P. Smith Paper Company; *S. A. Poyer* for Chicago Bridge & Iron Works; *Irwin W. Hart* for Franklin MacVeagh & Company; *F. R. Jerome* for Traffic Bureau of Associated Industries; *L. J. Thomas* for Johns-Manville Corporation; *Arthur W. Fredrickson* for Commonwealth Edison Company; *D. C. Norris* for Wolff Manufacturing Company; *Wm. Lister* for City of Evanston; *W. J. Womer* for Chicago District Ice Association and Lincoln-Boyle Ice Company; *John W. Bingham* for Corn Products Refining Company; *W. J. Rowley* for Albert Dickinson Company; *R. C. Ross* for Jos T. Ryerson & Son; *B. J. Klein* for Southern Cotton Oil Company; *Henry Hauseman* for Pure Oil Company; *J. A. Brogh* for Crane Company; *R. E. Kosmar* for R. F. Conway Company; *J. L. Hodgson* for American

Sand & Gravel Company; *Walter E. McCornack, G. W. Renwich* and *William Forgner* for Chicago Gravel Company and Chicago Stone Co.; *W. H. McReynolds* for Manitowoc Portland Cement Company; *F. S. Hol-*

lands and *H. T. Zaremba* for Standard Oil Company of Indiana; *John J. McGovern* for American Linseed Company and Best Foods Company; *John H. C. Kirk* for Darling & Company; *F. B. McElroy* for Whiteacre Greer Fireproofing Company and American Manganese Steel Company; *Leonard C. Reincke* and *David Dunn* for Wm. Wrigley, Jr. Company; *M. A. Erickson* for Shotwell Manufacturing Company; *Fred Mueller* for Cracker Jack Company; *J. H. Matheson* for The Columbia Mills, Inc.; *H. S. Welton* for Victor Chemical Company; *F. D. Porter* for National Association Waste Materials, Inc.; *B. J. Roggenbuck* for John F. Jelke Company and Geo. P. Brown Company; *B. H. Rubenstein* and *L. A. Boulger* for The Ruberoid Company; *Charles W. Stadell* and *H. D. Pixley* for Carson Pirie Scott & Company; *W. J. Buchanan* for Terminals & Transportation Corporation of Illinois; *Alexander Stuart* for Rosenbaum Grain Corporation; *R. W. Campbell* for Butler Paper Corporation; *F. D. Hassian* for Rathbone, Hair & Ridgway Company and Shavings & Sawdust Corporation; *Charles A. Livingston* for Illinois Manufacturers Association; *W. D. Lindsay* for United States Gypsum Company; *Anton J. Berger* for Construction Materials Company; *James B. O'Rear* for Acme Steel Company; *H. A. Brandon* for Bird & Son, Inc.; *C. C. Tiffany* and *Osborn Van Brunt* for Certain-teed Products Corporation; *J. J. Low* for Briggs & Turivas, Inc.; *R. R.*

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Hargis for Wilson & Company; *Paul E. Blanchard* and *John R. Baker* for Armour & Company; *R. D. Ryndex* and *Wm. N. Strack* for Swift & Company; *J. P. Haynes* and *A. H. Schwietert* for Chicago Association of Commerce; *E. L. Maynard* for Brownell Improve-

ment Company, Dolese Shepard Company, Federal Stone Company; A. C. O'Laughlin Company, Peoples Crushed Stone Company and Superior Crushed Stone Company.

By the Commission:
O. R. Livinghouse, Examiner:

By schedules filed with this Commission to become effective on April 30 1927, and later dates, carriers operating within the Chicago Switching District proposed to make certain increases and changes in the rates, rules and regulations affecting the handling of traffic within that portion of the Chicago Switching District located within Indiana.

By appropriate order approved April 29, 1927, this Commission suspended the operation of such schedules to August 27, 1927. By appropriate order approved August 22, 1927, the schedules were further suspended to February 27, 1928, and a third suspension order was issued under date of February 6, 1928, further suspending the tariffs to July 1, 1928.

The tariffs were further voluntarily suspended by the carriers from time to time, the last suspension being to and including February 1, 1932.

By agreement of all parties this cause was consolidated and heard jointly with the Interstate Commerce Commis-

sion in its Docket 19610, and its I. & S. Docket 2900, together with Docket Numbers 17250, 17269 and 17513 of the Illinois Commerce Commission.

Pursuant to notice as required by law, hearings were held in these consolidated dockets at Chicago, Illinois, on January 11th, May 15, 16, 17, 18, 19, 21 and 22nd, and September 18th, 19th, 20th and 21st, 1928.

ISSUES

The issues involved in this proceeding grew out of a decision of the Interstate Commerce Commission in Docket 15110, *Jones and Laughlin Steel Corporation vs. Baltimore & Ohio Railroad Company*, 96 I.C.C. 682, decided June 15, 1925. The decision of the Interstate Commerce Commission in the aforesaid case prescribed a distance scale of reasonable maximum rates on iron and steel articles, in carloads, from the Pittsburgh Group to the destination territory under consideration, which included certain points in Illinois, and found the rates on the same articles from points in Illinois and Indiana to the same destinations to be unduly preferential. Following the receipt of opinion of the Interstate Commerce Commission in the *Jones & Laughlin Steel Corporation* case, supra, the carriers held conferences among themselves, and jointly with the shippers and receivers of iron and steel articles worked out an adjustment for Illinois territory which was thought to be in harmony with the decision referred to. The rates proposed were filed to become effective April 25, 1926, and the schedules were suspended in I. & S. Docket 2655, *Iron and Steel Between Points in Illinois Committee Territory*. On account of the failure to realign at the same time the rates on iron and steel articles within the Chicago District, hereinafter re-

ferred to as the "District"; and also because of the failure of several of the interested carriers to revise the rates from Gary, Indiana, to points within the District in harmony with the scale in Docket 15110, supra, the suspension order was subsequently vacated except as to the rates from Chicago Heights, Illinois, and Gary, Indiana. Thereupon, at the request of the Interstate Commerce Commission, the car-

riers gave consideration to the realignment of the rates on iron and steel articles between Chicago Heights, Illinois, and Gary, Indiana, on the one hand, and points within the District on the other; and between points within the District. Tariffs were filed to become effective October 20, 1926, naming rates to apply within the District of 3, 5½ and 6½ cents, per hundred pounds, respectively, for one, two and three-or more line hauls, carload minimum 60,000 pounds, with an alternative rate of 8 cents per hundred pounds; minimum 36,000 pounds, applicable to two and three line hauls. These schedules were protested, and the Interstate Commerce Commission, the Public Service Commission of Indiana, and the Illinois Commerce Commission suspended the said schedules. The cases were heard, in part, on February 16, 1927.

In the meantime, numerous conferences were held between the carriers and representatives of the various shippers in the District, with a view to bringing about an adjustment of the rates within the District which would be satisfactory to the shippers and carriers alike.

As the result of these conferences, tariffs were filed effective March 19, 1927, cancelling the schedules under suspention and the proceedings were discontinued and new schedules were filed to become effective April 30, 1927, and on

later dates, naming rates of 3, 3½ and 4 cents to supercede the effective rates of 2½, 2½ and 3 cents respectively, for one-line, two-line, and three or more line hauls, for application within the District, ruch rates to apply not only on iron and steel articles but on commodities generally, except grain, grain screenings, and railway equipment moving on its own wheels, and excepting livestock via the Baltimore and Ohio Chicago Terminal Railroad; and similar rates to

apply on the same commodities, except brick and articles taking the same rates (including common brick), between points within the District on the one hand, and Chicago Heights on the other, and to and from points adjacent to the District, on carload traffic on which Chicago rates apply. The so-called "Compromise Rates" were suspended by the Interstate Commerce Commission in its Docket I. & S. 2900, by the Public Service Commission of Indiana in its Docket 8939, and by the Illinois Commission in its Dockets 17250 and 17269.

The Interstate Commerce Commission, upon its own motion in Docket 19610, in view of the limited record which could be developed under the issues presented in the suspension proceeding, entered upon an inquiry and investigation into and concerning the lawfulness of *all rates and charges* for switching within the District of all carload traffic moving in interstate commerce and the relation of those rates and charges for like switching in intrastate commerce, with the view to prescribing such reasonable, proper, non-discriminatory, non-prejudicial and otherwise lawful switching rates for said traffic, as the facts and circumstances appeared to warrant.

No general investigation of switching rates within the District was instituted by the Illinois Commerce Commis-

sion or the Public Service Commission of Indiana. Their inquiries in this proceeding are confined to the lawfulness of the proposed intrastate rates covered by the tariffs under suspension in the various Indiana and Illinois dockets.

DESCRIPTION OF CHICAGO SWITCHING DISTRICT

The boundaries of the District as defined in Agent Galligan's Tariff, I.R.C. No. 18, are described in Appendix "A" attached hereto and made a part of this order. The District is approximately forty miles in length and from seven to fifteen miles wide, and is densely populated. It covers an area larger than any other switching district in the United States, comprising over six hundred square miles, and is served by thirty-five railroads which maintain a network of more than five thousand miles of track within the boundaries of the District, serving over four thousand private industries. The Manufacturers Association of Chicago Heights urges that the boundaries of the District be extended to include Chicago Heights, a point shown by the record to be approximately 3.7 miles beyond the southern boundary of the District, now generally taking the Chicago District rates. The Chicago and Eastern Illinois Railway Company, which serves Chicago Heights, also contends for the inclusion of this industrial center within the switching limits.

HISTORY OF CHICAGO SWITCHING DISTRICT RATES

Prior to August 1, 1911, the rates, charges and practices of the carriers covering the switching service within the District were in an unsatisfactory, and what has been described as a chaotic condition. Each carrier within the District published its individual switching rate. No joint rates

were in effect. During 1910 a Joint Committee was organized composed of shippers and carriers, with the object of establishing some uniformity in local switching rates. After

many conferences various differences were harmonized and an agreement was entered into which has since been known as the "Lowrey Agreement", which was translated into an "All Commodity" tariff effective August 1, 1911, establishing uniform, individual and joint rates on all commodities except coal, coke and grain. The record shows that the exception on coal and coke has since been removed. The rates in effect prior to the Lowrey Agreement supplied the measure by which the new rates were determined. The all-commodity rates published under the Lowrey Agreement were 1½ cents for one and two-line hauls, and not to exceed ½ cent for each additional line haul, minimum 60,000 pounds. Due to the general increases and reductions in rates since 1911 the present all-commodity rates are 2½ cents for one and two-line hauls, and 3 cents for three-line hauls, as compared with the proposed rates of 3, 3½ and 4 cents, respectively, minimum 60,000 pounds.

The record shows that the carriers generally concede that exceptions should be made to the proposed all-commodity basis of rates, carloads, on such commodities as slag, cinders, quarry strippings, et cetera, which are without commercial value, the accumulation of which at industries is generally regarded as a nuisance and impedes the operation of the plant and can only be disposed of by removal through cooperation of the carriers.

In addition to the foregoing the Chicago and Illinois Western Railroad desires to make an exception of tar products, due, as alleged, to the imminent loss of the traffic if any increase is made in the present rates.

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COST STUDY

Originally, as appears from the foregoing, the carriers endeavored to realign the rates on iron and steel articles

only. The Interstate Commerce Commission thereupon, in its notice of October 25th, 1926, requested that the carriers prepare and submit statistics relating to the shortest, longest and average hauls on iron and steel articles within the District, to be accompanied by detailed cost data. The request was later changed to include all commodities embraced in the 69 classes provided for in the carriers' annual report to the Commission. Pursuant thereto certain statistics were compiled on 42,666 cars moved in September, 1926, while the cost study was prepared for only 26,166 cars.

Fifteen of the carriers operating within and adjacent to the District and between the District and Chicago Heights, Illinois, collaborated in a joint cost study of the switching movements originating and terminating within its boundaries. This study was introduced upon request of the Interstate Commerce Commission without restrictions as to the specific carriers to be included. The study was based upon the Coverston-Saur formula, briefly described hereinafter, and embraced 7 trunk lines, 3 large switching and terminal roads (belt lines), and 5 smaller switching and terminal roads (so-called industrial roads), hereinafter collectively called the study roads, as follows:

Trunk Lines

Chicago, Burlington & Quincy Railroad
Chicago & North Western Railway
Chicago, Milwaukee, St. Paul & Pacific Railroad
Chicago, Rock Island & Pacific Railway
Elgin, Joliet & Eastern Railway

Illinois Central Railroad
Pennsylvania Railroad

Large Switching & Terminal Companies

Baltimore & Ohio Chicago Terminal Railroad
Belt Railway of Chicago
Indiana Harbor Belt Railroad

Small (Industrial) Switching & Terminal Companies

Chicago & Illinois Western Railroad
Chicago Short Line Railway
Chicago, West Pullman & Southern Railroad
Pullman Railroad
Illinois Northern Railway

The study covers carload movements only, and segregates the expenses incurred thereon into three general classes, namely, clerical, switching and car detention or maintenance. Taxes and return on investment are provided for by the use of an estimated ratio, referred to as an operating ratio and used as a divisor to expand the determined costs so as to embrace those elements.

Clerical. This expense represents the cost incurred to prepare records at the point of origin and the point of destination. It embraces the direct expense as well as an apportioned amount of superintendence, maintenance, and general expenses. The total clerical cost at each terminal is reduced to a unit cost per consignment which is assigned to each car moving in or out of the respective terminal.

Switching. This expense represents the cost of all services required in the physical movement of a car, inclusive of an apportioned amount of superintendence, maintenance, traffic, and general expenses. The total switching expense is

reduced to an engine-hour basis and ultimately to the cost per unit of production, the denominator being the number

of cars handled in an hour by an engine while performing a distinctive part of the whole movement. These distinctive parts make up the switching service as a whole and are designated "elements of service." These elements represent switching work such as classification, transfer, interchange and industrial and team track switching. The elements of service embraced in a given route between a shipper and a consignee are combined under an "index number" so as to show the total switching cost for each car. The respective index cost is then assigned to each car moving over the same route.

Car Detention. This expense embraces the maintenance of freight train cars inclusive of an apportioned amount of superintendence, maintenance, and general expenses. The total car detention expense is reduced to the cost per serviceable car day, which is applied to each car for every day that it is in switching service.

Operating Ratio. After having obtained the total operating expense for the traffic under review, provision must be made for taxes and a fair return upon the property used in performing the service. It is suggested that this be accomplished by means of an operating ratio, which is to say that the total costs as determined represents, for example, 67% of the rate or revenue, which should be collected for performing such service. This would allow the difference, or in this illustration 33%, for taxes and profit or return on the investment.

The formula introduced by the carriers used as an illustration an operating ratio of 66.67%.

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The carriers claim that an operating ratio of 67.4% (correct figure should be 69.2 as will be explained later) was necessary for the railroads of the country as a whole to

earn 5.75% upon their investment during the year 1926. However, the carriers herein contend for a ratio lower than 66.67% whereas the shippers contend for a higher ratio.

The test periods within which the unit costs were determined were confined to one week on each of the 15 roads during June, August and October, 1927. The unit costs so determined were then applied to the 26,166 cars previously mentioned which were embraced in the traffic analysis as of September, 1926, and hereinafter referred to as study cars. The foregoing also applies to 638 additional study cars which moved between Chicago Heights and the District during September, 1926.

The following tables prepared from the carriers' exhibits, show the total traffic inclusive of study and nonstudy cars.

Study and Nonstudy Cars
Chicago Switching District

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
One-line Haul—								
Study	7,573	17.75	1,951	4.57	2,426	5.69	11,950	28.01
Nonstudy	595	1.39	7,017	16.45	134	.31	7,746	18.15
Total	8,168	19.14	8,968	21.02	2,560	6.00	19,696	46.16

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	5,472	12.82	5,853	13.72	158	.37	11,483	26.91
Nonstudy	1,958	4.59	4,257	9.98	11	.03	6,226	14.60
Total	7,430	17.41	10,110	23.70	169	.40	17,709	41.51
Three-line Haul—								
Study	803	1.89	1,930	4.52	.....	....	2,733	6.41
Nonstudy	793	1.85	1,735	4.07	.....	....	2,528	5.92
Total	1,596	3.74	3,665	8.59	.....	....	5,261	12.33
Total (Study)	13,848	32.45	9,734	22.82	2,584	6.06	26,166[1]	61.33
Total (Nonstudy)	3,346	7.84	13,009	30.49	145	.34	16,500[2]	38.67
Grand Total	17,194	40.29	22,743	53.31	2,729	6.40	42,666	100.00

1—15 Study roads.

2—20 Nonstudy roads.

Between Chicago Switching District and Chicago Heights

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Two-line Haul—								
Study	38	2.94	354	27.41	.....	....	392	30.35
Nonstudy	56	4.33	338	26.16	.....	....	394	30.49
Total	94	7.27	692	53.57	.....	....	786	60.84

	Interstate		Intrastate				Total	
			Illinois		Indiana			
	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent	Cars	Per Cent
Three-line Haul—								
Study	135	10.44	87	6.74	.....	....	222	17.18
Nonstudy	79	6.12	156	12.07	.....	....	235	18.19
Total	214	16.56	243	18.81	.....	....	457	35.37
Four-line Haul—								
Study	6	.46	18	1.39	.....	....	24	1.85
Nonstudy	.....	.....	25	1.94	.....	....	25	.94
Total	6	.46	43	3.33	.....	....	49	3.79
Total (Study)	179	13.84	459	35.54	.....	....	638	49.38
Total (Nonstudy)	135	10.45	519	40.17	.....	....	654	50.62
Grand Total	314	24.29	978	75.71	.....	....	1,292	100.00

The average costs, hauls and loading as compiled by the carriers, based upon the study cars and shown in their exhibits are as follows:

Switching Costs Between Points in the Chicago Switching District

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost		Average Total Cost Based on Operating Ratio 66.67%	
				Per Car	Per 100 lbs.	Per Car	Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
One-line	11,950	13.12	86,250	$15.94	1.8	$23.92	2.8
Two-line	11,483	21.32	84,145	18.92	2.2	28.39	3.4
Three-line	2,733	26.53	85,405	21.52	2.5	32.29	3.8

Switching Cost Between Points in the Chicago and the Chicago Heights Districts

	Cars	Average Haul Per Car	Average Loading Per Car	Average Operating Cost Per Car	Average Operating Cost Per 100 lbs.	Average Total Cost Based on Operating Ratio 66.67% Per Car	Average Total Cost Based on Operating Ratio 66.67% Per 100 lbs.
		(Miles)	(Pounds)		(Cents)		(Cents)
Two-line	392	31.66	75,171	$18.77	2.5	$28.15	3.8
Three-line...	222	33.42	74,416	21.62	2.9	32.42	4.4
Four-line....	24	41.94	84,994	21.57	2.5	32.35	3.8

1—No one-line hauls involved.

After the cost study was submitted into the record the shippers raised many objections to the accuracy of the methods and figures used by the carriers. The carriers also at a later date made additional claims of costs.

The important criticisms of the carriers relate to the following which would tend to increase the determined costs:

1. The studies were made during the summer and fall periods without allowance being made for some of the increased costs incurred during the winter months. This is based upon an alleged check indicating that less cars were handled and more fuel consumed during the months of December, January and February than in any of the other nine months of the respective years, 1925, 1926 and 1927.

2. The cost figures reflect the level of wages in 1927. Later increases granted and pending have not been included.

3. No allowance was included by the trunk-line study roads for the transportation of locomotive fuel over the

respective roads' own lines or by the three large belt lines for distributing coal to their respective fuel stations.

4. No part of the maintenance expense of main tracks to cover their use in the switching service was included in the switching costs.

5. Costs borne by the intermediate and the terminating roads for the return of some empty cars were omitted.

On the other hand the shippers point to other infirmities, both as to the theory and the application of the carriers' formula, of which the following are considered the most important and would tend to lower the costs:

1. On the basis of the serviceable car-day detention, a portion of the maintenance expenses of freight-train cars, or so-called car detention, was allocated to the cost of switching. The shippers' primary objection to this is that the use of the serviceable car-day as a proper basis for this apportionment is erroneous because it comprehends only a time factor, no consideration being given to wear and tear from use as measured by mileage. This criticism is on the ground that repairs, the most important item of maintenance, result principally from damage done when a car is in motion and not while standing still. It is contended that this basis overstates the cost for intra-district traffic and understates the cost for road haul traffic. In this connection the shippers also point out that the responsibility for empty movements as between road and switching services has not been carefully observed, resulting in both over and understatements in the costs, and that it is erroneous to include private cars in the computation of the unit cost per car-day for maintenance, inasmuch as the carriers perform only running repairs on private cars except in case of accident.

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2. Failure to determine distinct engine-hour costs for switching and weighing cars at industries because of the use of lighter engines in those services attended by lower

engine-hour costs and because in most instances that service is performed on tracks owned and maintained by the industries.

3. The determination of unit costs based upon movements during a test period of one week in 1927 on each respective carrier and the application of those unit costs to traffic materially different in volume in another period or during September, 1926, results in an overstatement. The test period should be of longer duration so as to more accurately reflect the normal movement of traffic and the costs so determined should be applied to the traffic moving during the test period instead of another period in which the traffic may not be similar.

4. Failure to reduce the cost by demurrage and weighing charges collected results in an overstatement of the cost as a basis for a distinct transportation rate where, as here, the expenses attached to those services are included in the cost.

5. Throughout the entire proceeding the shippers persistently contended for the inclusion of the Chicago Junction Railroad in the cost study, on the grounds that this road handled a large volume of business, most of which was short haul traffic, and that the omission of such a carrier would unduly increase the cost as indicated by the study roads. The shippers also object to the inclusion of the Elgin, Joliet and Eastern with special reference to the large volume of business included in the study which moves partly outside of the District. For these reasons the ship-

pers contend that the cost study is not representative of the intra-district traffic as a whole.

6. The operating ratio of 66.67 per cent mentioned by the formula is stated to be much too low.

7. Subordination of switch movements to passenger and road freight trains has inflated the cost of intra-district traffic.

8. Many transfer costs include costs of setting out and picking up cars at the beginning or end of the transfer run. Combinations of these transfer costs have been applied on long transfers resulting in overstatement of costs.

9. General criticism was made of the carriers' operating methods and the surrounding conditions as affecting the costs. These relate to circuity of movements, operating methods and restrictions at interchange points, lack of trackage rights to facilitate hauls, and failure to perform joint switching in some instances where two or more carriers serve the same plant.

Representatives of the Illinois Commerce Commission submitted testimony indicating that the costs as compiled by the carriers are overstated due to the inclusion of time prior to the actual assignment of cars to the particular switching movements and also subsequent to their release and the lapse of sufficient time to return cars to a carriers' yard. They also agree with the shippers' contention that the costs should have been reduced by the amount of demurrage collected.

Other less important criticisms were made, but it is not deemed necessary to discuss them in detail.

The following table summarizes and compares the results of the cost study revised to the basis of the respective claims of the carriers and shippers:

	11,950 Cars One-line		11,483 Cars Two-line		2,733 Cars Three-line	
	Carriers	Shippers	Carriers	Shippers	Carriers	Shippers
Operating Exp. (Study)	$190,552	$190,552	$217,317	$217,317	$58,829	$58,829
Net Agreed Undercharge	4,031	4,081	2,468	2,468	414	414
	$194,583	$194,583	$219,785	$219,785	$59,243	$59,243
Disputed Adjustments						
Net Undercharge	4,500		9,787		7,679	
Net Overcharge		35,684		35,510		7,826
Revised Operating Expense	$199,083	$158,899	$229,572	$184,275	$66,922	$51,417
Operating Expenses per 100 lbs.	1.93c	1.54c	2.38c	1.91c	2.87c	2.20c

In the following table we have compared the carriers' original claim of costs (exhibit 7-A) with the present and proposed revenues of the same cars for which costs have been determined.

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers' Orig. Claims.									
One Line	2.5	2.59	1.85	71.43	3.0	3.00	1.85	61.67	2.77
Two Line	2.5	2.68	2.25	83.96	3.5	3.69	2.25	60.98	3.37
Three Line	3.0	3.58	2.52	70.39	4.0	4.33	2.52	58.20	3.78
Average (weighted)				76.60				60.82	

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Little need be said regarding the foregoing figures except to point out that the carriers have at a later date made

many claims of additional cost. After making adjustment for such claims as could be converted into definite amounts the carriers' claims become as shown in the following statement.

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 66.67%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Carriers Revised Claims									
One Line	2.5	2.59	1.93	74.52	3.0	3.00	1.93	64.33	2.89
Two Line	2.5	2.68	2.38	88.81	3.5	3.69	2.38	64.50	3.57
Three Line ...	3.0	3.58	2.87	80.17	4.0	4.33	2.87	66.28	4.30
Average (Weighted)...				81.34				64.58	

On the other hand the shippers have presented much evidence of claimed overstatements of cost. The net result of such adjustments claimed by the shippers as could be stated in definite amounts are as follows:

	Present				Proposed				
	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Rate	W'ted Average Revenue	Cost	Ratio Cost to W'ht'd Average Revenue	Costs Expanded by 76.80%
	Cents	Cents	Cents	Per cent	Cents	Cents	Cents	Per cent	Cents
Costs Based on Shippers' Claims									
One Line	2.5	2.59	1.54	59.46	3.0	3.00	1.54	51.33	2.01
Two Line	2.5	2.68	1.91	71.27	3.5	3.69	1.91	51.76	2.49
Three Line ...	3.0	3.58	2.20	61.45	4.0	4.33	2.20	50.81	2.86
Average (Weighted)...				64.77				51.42	

A study of the foregoing summaries denotes that there is a wide difference between the costs as claimed by the two contending parties. According to the claims made by the carriers the present rates are much too low and the rates proposed are not much in excess of the proper rates. On the other hand based on the claims of the shippers even the present rates are excessive.

The above differences in results are attributable, in the main, to the disagreement between shippers and carriers as to the theory and the application of the carriers' cost formula relative to the allocation of the maintenance of cars (car detention); the inflation of averages for the study period of September, 1926, by the carriers' application of higher element-of-service costs developed on specific movements of relatively low volume during the test period, limited to one week in 1927, to the same elements of service

performed on similar movements of greater volume during September, 1926, without a compensating movement of

higher volume in the latter period at the lower test period costs developed on other elements of service; the carriers' failure to develop distinct costs for industrial switching, weighing, etc., because of lighter engines employed with less expense than in other switching service; and the variation between the operating ratio of 76.8 per cent proposed by the shippers and the operating ratio of 66.67 per cent suggested by the formula and considered as maximum by the carriers.

AGREED ADJUSTMENTS OF COST DATA

Winter Operations

The principal adjustment on which the carriers and the shippers have agreed is the effect of winter operations. The cost studies were prepared in the summer and fall and it is claimed that costs would be increased in the winter months. The amount of this adjustment was agreed upon by the carriers and shippers and appears reasonable. In our opinion the cost data (Exhibit 7-A) should be adjusted by these amounts (Exhibit 83, p. 4).

Miscellaneous Minor Items

There were a number of minor adjustments claimed by the shippers which were the subject of certain conferences with the result that definite amounts were agreed upon. We have carefully examined the record as to these items and believe them to be reasonably correct. (Exh. 83, pp. 1-3.)

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DISAGREEMENTS

Disparity Between Study and Other Roads

One of the most important criticisms of the shippers is directed toward the question as to whether the cost study,

as conducted on the fifteen participating railroads, is representative of the transportation situation throughout the District. The criticism principally refers to the inclusion of the Elgin, Joliet & Eastern Railway, hereinafterward referred to as the E. J. & E., and the exclusion of the Chicago Junction Railroad.

The E. J. & E. traffic, which is included in the cost study, is composed largely of traffic whose movements are partly inside of the District and partly outside of the District. The record shows that the E. J. & E. is not a party to the Lowrey Tariff, and that many of its rates are on a higher basis.

The Chicago Junction Railroad is one of the largest switching roads in the district, and handles a large volume of short hauls. Many of its rates are below the Lowrey basis. This road operates in the densely built up Stock Yards District and surrounding neighborhood.

Since the present case involves the fixing of rates only within the District and between the District and Chicago Heights, Illinois, it is difficult to understand why the carriers should have included, in determining the costs, a great volume of traffic moving between the District and other points outside of the District, such as Gary, Indiana. It is not proposed that the District be extended to include Gary, Indiana, and neither is there any evidence that any such movements are similar to movements within the District. The record shows that of the 11,950 one line haul cars in the study 7,093 cars were E. J. & E. movements, of which,

6,854 involved movements outside of the District. *Thus over 57% of the one line haul cars used as a basis of determining intra-district switching costs actually moved outside of the district.* Of the total of 11,483 two line haul study cars, 1,264 involved movements on the E. J. & E.; of

the 2,733 three line haul study cars, 730 involved movements on the E. J. & E. The record does not disclose how many of the two and three line E. J. & E. movements are outside of the District.

A comparison of the carriers' original cost study, Exhibit No. 7, which covers the fifteen study railroads, with the carriers' original statistical Exhibit No. 11, which covers the entire traffic on all railroads in the District, shows that the classes of traffic included in the cost study are not, in many case, similar to the classes of traffic excluded from the study. As the Chicago Junction Railroad operates extensively in the Stock Yards District, it is reasonable to presume that the exclusion of the Chicago Junction Railroad from the cost study is largely responsible for the dissimilarity between the group of study cars and the remainder of the traffic; illustrations of this point are: one line haul, fresh meats, no cars in study, 130 cars in other traffic; other Packing House Products, 10 cars in study, 1294 cars in other traffic; agricultural implements, no cars in study, 94 cars in other traffic.

Since the original cost study Exhibit No. 7 did not show the revenues collected on the traffic covered by the cost study, the only comparison of costs and revenues possible, based upon the original showing of the carriers, was a comparison of the cost of the study cars with the revenues of all of the traffic. A study of the makeup of the cost study

traffic, as compared with the total traffic, indicated many important differences, of which the above reference to fresh meats, packing house products and agricultural implements is an illustration. This matter was called to the carriers' attention with the result that they revised both Exhibit No. 7 and Exhibit No. 11, by preparing and introducing into the record Exhibit No. 7-A and Exhibit No. 11-A. The revised

cost study Exhibit No. 7-A not only showed the cost of handling the traffic studied, but also the present and proposed revenues pertaining to that particular traffic.

The carriers' revised statistical Exhibit No. 11-A sets forth the statistics pertaining to the cost study cars separately from the statistics pertaining to the cars not included in the study. The following summary of important characteristics of the study cars, as compared with the cars not studied, was obtained from Exhibits No. 7-A and No. 11-A:

COMPARISON OF PRESENT AND PROPOSED REVENUES PER HUNDRED POUNDS AND AVERAGE DISTANCE HAULED

	Present Rev. per Cwt.		Proposed Rev. per Cwt		Average Car Haul—Miles	
	Study Cars	Other Cars	Study Cars	Other Cars	Study Cars	Other Cars
	Cents	Cents	Cents	Cents		
One Line	2.6	1.3	3.0	1.7	13.12	6.49
Two Line	2.7	2.5	3.7	3.5	21.32	20.76
Three Line	3.6	3.4	4.3	4.1	26.53	25.45

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This tabulation shows that in the case of one line hauls, the cars which were studied for the purpose of determining costs had an average haul of over 13 miles, which was more than twice the average haul of the cars not studied. A similar situation exists in the present revenues per hundred pounds, in that the carriers received 2.6 cents per hundred pounds on the cost study traffic, and exactly half that amount on the other traffic. The rates proposed by the carriers would result in an average revenue of 3c per hundred pounds on the cost study cars, and only 1.7c on the other cars. In this connection it is interesting to note that the carriers' revised claim of cost for study cars indicates a cost of 1.93c per hundred pounds for one line hauls, which

greatly exceeds the revenues which they, themselves proposed to collect on the traffic which was not included in the cost study.

The average car haul and the present and proposed revenues of the two and three line hauls are slightly lower for the other cars than for the study cars, but the difference is not nearly as marked as in the case of single line hauls.

Because of the great difference in the three known characteristics (average haul, present revenues and proposed revenues) of the other cars, as compared with the study cars, it does not appear reasonable that the costs as developed on the study cars should be assumed to represent the cost of handling the other cars.

It, therefore, would be wrong to compare the costs as developed on the study cars with the revenues of all the traffic. If any comparison is to be made, the only proper one would be to compare the costs as ascertained on the study cars with the revenues earned on the same traffic.

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Since the record shows that a large percentage of the E. J. & E. traffic included in the cost study moves across the boundary of the District, either coming into or going out of the District, it would be very desirable to be able to segregate that traffic from the cost study. However, the record does not contain any information enabling us to make that segregation.

The record shows that the tracks of the E. J. & E. which would carry the traffic included in the cost study, lie principally in the State of Indiana, and to a small extent within the State of Illinois. The record also indicates that there are many rates on the E. J. & E. which are in excess of the Lowrey Rate basis. Should this information be used as a basis for a presumption that all interstate and intrastate

Indiana movements on rates over both the present and the proposed Lowrey basis constitute traffic over the E. J & E., we would be assigning to the E. J. & E. 428 one line haul cars, although the record definitely shows that there are 7093 E. J. & E. cars in the study. On the two line hauls this process would assign to the E. J. & E. 1496 cars, although the record shows that there were only 1264 E. J. & E. cars in the study. On the three line hauls this process would assign to the E. J. & E. 1201 cars although the record indicates that only 730 E. J. & E. cars are included in the study. This method, although at first appearing to have some merit, is thus proven to be incorrect, and if used for the purpose of eliminating the effect of the E. J. & E. would result in arbitrary reductions in the indicated revenues of the traffic under review. The record further shows that there are rates in the District which are in excess of the Lowrey basis other than those existing on the E. J. & E. The rec-

ord also shows that many of the cars moving over the E. J. & E. moved on rates, while at present are above the Lowrey basis, would not exceed the proposed Lowrey basis, and thus would not be included in the aforementioned adjustment.

Based upon the present record, it is impossible to exclude the traffic of the E. J. & E.

Car Detention

In the compilation of cost of handling District traffic the carriers have allocated the cost of maintaining freight cars (which includes car repairs, depreciation and retirements, together with certain overhead costs) solely on the basis of time.

They first determined (Exhibit 3) the average cost of maintaining one freight car for one day which amounted

to $0.64352. This was based upon the experience of nine railroads whose operations practically cover the entire United States. This unit cost was then applied to the cars moving in the District on the basis of the number of days each car was assigned to a particular movement.

A great deal of criticism was directed against this method of allocating the cost of maintaining freight cars to the switching service in the District. This criticism was based largely upon the contention that the maintenance of freight cars was related much more closely to the amount of use made of the cars, or the miles traveled, rather than the element of time. For instance, it was stated that freight cars used in comparatively short hauls within the District were in motion only a small part of the total time required to handle the shipments. During most of the time the cars were actually standing still at the shipper's or consignee's places of business or in the railroad yards. On the other

hand, cars used in long distance road haul traffic would be in motion a larger percentage of the total elapsed time.

The shippers have introduced an illustration which they claim is a very conservative calculation, dealing with a car in a single line movement in the District as follows: The record shows that the average loaded haul of single line cars moving in this study was approximately 12 miles. The shippers have added to this an allowance of an equal distance for the empty haul and another equal amount to provide for the shunting of the cars backwards and forwards in classification and other service, making a total distance traveled of 36 miles, claimed to be a conservatively high figure.

The shippers' Exhibit No. 13 contains a computation showing that the average number of car days assigned to

single line cars was 6.6 car days. (A correction of this figure, based upon the carriers' corrected Exhibit 7-A would make it 6.2 car days which, however, will have little effect upon the present computation.) Based upon a total haul of 36 miles per car and the average number of days in service of 6.6 days, the shippers have computed that the cars in switching service move only 5.5 miles per day as compared with almost 30 miles per day for all operations, (or *more* than 30 miles per day if terminal movements are included). The shippers have carried this comparison still further on the basis of the normal average distance of 6 miles covered in one hour by switching locomotives indicating that if the car was in motion throughout the entire day it would have moved 144 miles. These figures indicate that since the cars traveled only 5.5 miles per day they were actually in motion only about 4% of the time and were standing still about 96% of the time.

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Besides the objection to the sole use of the element of time in apportioning car repairs, serious objection was raised to the amount of time which was charged against the cars in the cost study. The shippers have pointed out that many of the cars in their opinion have unreasonably long detention (Exh. 13, p. 45, Exh. 83, p. 118) and that costs have been assigned to many cars in the study which should be charged to prior or subsequent loads.

Accountants for the Illinois Commission have also made extensive studies of the time charged to cars in the cost study. This investigation was completed for 1018 cars and partially completed for 189 cars. This work represented a check of approximately 2200 car terminals. It was found that of the 1018 cars checked completely, 816 cars were in error. The reduction in the amount of time chargeable to these 1018 cars amounted to over 26%. The reduction made

on the 189 cars checked at only *one* terminal amounted to over 16%. Exhibit 96, prepared and introduced by the Illinois Commission accountants, contains the following summary:

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SUMMARY OF TERMINAL DETENTION ON CARS CHECKED

	Cars Checked both for beginning and ending detention				Cars Checked either for beginning or ending detention			
	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total	1 Line Hauls	2 Line Hauls	3 Line Hauls	Total
Total number of cars checked	276	645	97	1018	.....	172	17	189
Number of cars corrected	223	516	77	816	.....	103	13	116
Number of cars Unchanged	53	129	20	202	.....	69	4	73
	(Hrs.)	(Hrs.)	(Hrs.)	(Hrs.)		(Hrs.)	(Hrs.)	(Hrs.)
Cost Study Terminal Detention	71596	196575	29069	297240	.....	52050	4779	56829
Corrected Terminal Detention	54293	142432	21365	218090	.....	43670	3834	47504
Deductions from Cost Study Detention:								
1-Idle Time	10444	22249	4329	37022	.....	7171	882	8053
2—Unusual Delay of Loaded Cars	288	3054	240	3582	.....	144	.....	144
3—Reconsigned (Or Reshipped) Cars	533	753	.....	1286	.....	200	.....	200
4—Private Line Cars	2142	6451	30	8623	.....	.....	.....	.....
5—Return of Empty Cars from Base Yard to Interchange Point	3158	3269	295	6722	.....	92	15	107
6—Cars on Repair Tracks	696	755	72	1523	.....	312	.....	312
7—Miscellaneous Adjustments (clerical errors, etc.)	42	17612	2738	20392	.....	461	48	509
Total Deductions	17303	54143	7704	79150	.....	8380	945	9325

The foregoing table indicates that errors were found in very substantial amounts, being 24% in one line hauls and

27% in both two and three line hauls. The record indicates that Exhibit 96 was carefully prepared after months of painstaking and careful investigation. It is further shown that the Illinois Commission accountants reviewed with the Chicago and North Western Railway Company each and every one of the 269 car terminals checked on that road, with the result that practically no change was made in the figures of that Commission's accountants. This is very significant in view of the fact that the corrections on the Chicago and North Western represent 27.6% of the total correction in time for all cars checked, although the volume of traffic checked on that road represents only 12% of the total checked, measured by car terminals.

The carriers have not contested the accuracy of Exhibit 96. The only rebuttal evidence offered by the carriers was a one page exhibit, No. 98, with the intent of showing that the cars checked by Illinois Commission accountants were not representative of the whole study but included a larger percentage of long detention cars than of cars having short detention.

This Exhibit 98 appears to have lost most of its import because Exhibit 96 states on its face (Comments p. III) that it lays no claim to being representative of the entire group of cars in the study. Nevertheless, Exhibit 96 is conclusive to the effect that many serious errors exist in the amount of time charged against the traffic under review.

Exhibit 96 shows that almost 50 per cent of the errors in time which the carriers have charged against this intra-district switching is due to the inclusion of idle time of cars when they were not in fact assigned to the particular movement to which the time was charged. A great number of empty cars were placed on industry tracks without having

been ordered by the industry. Such cars frequently remained on the industries' tracks for many days before they were actually ordered and brought up to the loading platforms. Important cases of this kind were found at the International Harvester Company, Deering Works on the Chicago and North Western, J. T. Ryerson Company on the Pennsylvania, and Brownell Improvement Company on the Baltimore and Ohio Chicago Terminal Railroad. Other important errors in the inclusion of excess time was found in the case of private line cars where the carriers had included time for such cars while they were standing on the tracks of the owner company, during which time the carriers had no responsibiliy whatever for the said cars. In addition, a great number of clerical errors were discovered which resulted in a very material correction.

The record (Exh. 84, p. 188) clearly denotes that an error of considerable magnitude was made in assigning car detention on certain coke movements on the E. J. & E. The method used by this carrier resulted in charging against the 3,955 cars included in the study the entire available time for the 30 days of the month of September of all of the 922 coke cars that were found to have carried coke during the month. The carrier made no allowance for the time these cars were used to handle 4990 coke movements within the Gary plant of the Illinois Steel Company. No allowance was made for time of car while unserviceable in repair shops or awaiting repairs. This method improperly charges all idle time of said equipment against the traffic included in the study. A calculation presented by the Illinois Commission accountants indicates that the carriers' claim of 7.06 days required for each of these coke movements should be reduced to approximately 3.16 days.

After the carriers had determined the number of days detention chargeable to each car in the study, they applied thereto the average car detention cost per day of $0.64352. This cost was based upon an average for nine trunk line railroads whose operations practically cover the entire United States. It includes the costs of all repairs to the carriers' own equipment, except such damage as was caused by other railroads. It also includes the cost of repairs of damages to equipment of others for which these roads were responsible. The serviceable car days used by the carriers as the divisor include the serviceable days of all equipment on each of these roads regardless of ownership.

The record shows that the belt lines and industrial railroads own only a few freight cars and do very little repair work to freight cars not owned by them. As a result the car repairs costs of such railroads are extremely low as compared with car repairs on trunk line railroads.

These facts form the basis for certain objections on the part of the shippers to the use of the average car detention cost of $0.64352 per day.

The first objection is that this average cost is erroneous because it includes cost of making certain repairs incurred while the cars were in use by the belt and industrial railroads, while the number of serviceable car days used as divisor does not include the time that said cars spent on the lines of the belt and industrial railroads.

The second objection is that the carriers then have applied the average unit cost of $0.64352 to all movements on the belt and industrial railroads.

The third objection is that the unit cost has been applied to private line cars. (This is partly offset by the fact that

the serviceable car days of such private line cars as were on the lines of the trunk line railroads on the dates the cars were counted have been included in the carriers' number of serviceable car days used as a divisor in determining the unit costs.)

These objections appear to be of considerable importance in a case such as the present involving only intra-district switching and covering a territory in which a great number of belt and industrial railroads operate and where it is shown that eight (8) out of the fifteen (15) study railroads were belt or industrial lines.

Pursuing their general contention that time alone is not the proper basis for apportioning car repairs, the shippers have presented certain compilations as to the expense of maintenance of cars applicable to the District traffic on a basis which gives effect to both the element of use or miles traveled as well as the element of time. They have adopted in general a formula which was contained in the American Railway Engineering Association Bulletin for March, 1923, dealing with the question of apportionment of this class of expense. This formula was prepared by a committee of engineers of the American Railway Association.

The following is a brief summary of the shipper's computation of the costs applicable to one line hauls. They first separated the average cost of maintaining one freight car for one day as determined by carriers in their Exhibit No. 3, amounting to 64.352 cents as between the two items of (a) repairs and (b) depreciation and retirements. The overhead accounts were prorated to these two groups. The results were as follows:

Repairs	49.59 cents
Depreciation and retirements	14.75 cents
Total	64.35 cents

It was considered that 65% (Formula basis) of the item of repairs, amounting to 49.59 cents per car day, was attributable to use while the remainder of this item and the entire cost of "Depreciation and Retirement", was attributable to time. This resulted in 32.23 cents being allocated to use and 32.12 cents allocated to time. The shippers then divided the 32.23 cents per car day attributable to use by 30, which is the general average miles per car day during the year 1926, resulting in a cost 1.1 cent per car-mile. From these basic figures the shippers then computed the cost of car maintenance allocable to district traffic as follows:

The record shows that the average loaded haul of all single line cars in intra-district traffic was 12 miles. In order to make adequate allowance for empty hauls and movements in classification and other services the shippers have adopted an average distance haul of 20 miles per car to which they have applied a cost of 1.1 cent per mile, resulting in a cost of 22 cents per car for the element of use. In dealing with the element of time they have used the average detention of 6.6 days per car and applied thereto the cost of 32.12 cents per car day, as determined above, making a total cost applicable to the element of time of $2.11 per car. To the sum of these two items the shippers have added 15 cents per car in single line traffic to cover any additional damage resulting from use on account of loading or unloading or general handling within

the District. This has resulted in a total cost per car handled in single line district traffic of $2.48 which compares with the cost of $3.95 per car claimed by the carriers.

The shippers applied the same formula to two and three line hauls, using the average days detention as computed from carriers' Exhibit 7, and using for two-line hauls an average haul of 40 miles and terminal damage of 30 cents, and for three-line hauls an average haul of 50 miles and terminal damage of 45 cents. In this manner the shippers arrived at an average cost per car for car maintenance of $3.16 for two line hauls and $3.78 for three line hauls as compared with the carriers' cost of $4.88 for two line hauls and $5.66 for three-line hauls. The amount of over-charge claimed by the shippers on this item of car detention is $21,167 for one-line hauls, $19,536 for two-line hauls and $5,005 for three-line hauls.

A careful study of the methods used by the shippers indicates that they did not follow the American Railway Engineering Association formula in all respects and also that they made certain estimates which are not entirely supported in the record.

The record does not contain the facts and figures necessary to make a correct adjustment of either the carriers or the shippers claim of car detention costs.

SEPARATE ENGINE HOUR COSTS

Weighing and Industrial Service

Criticism has been directed at the cost study in respect to the engine-hour figures used by the carriers in determining the costs of weighing and industry switching. The carriers developed engine-hour costs which were applied to all

elements of service. Consideration was given by some of the carriers to differences in the characteristics of certain lines, districts, or operating divisions and separate engine-hour costs were developed for those locations; in applying such costs indiscriminately to the various elements of switching service, it was claimed that the carriers burdened the weighing and industry services with costs that should have been distributed elsewhere.

The carriers do a considerable amount of industry switching on property owned by the industries. Most of the large industries and many of the smaller industries own and maintain the industry tracks located on their properties. In connection with switching work performed by the carriers on the tracks of such industries it is manifestly improper to charge up the expense of maintenance of way and structures and the related general expenses. It is also unfair to add to such expenses a percentage for return on investment. Nevertheless, the method followed by the carriers in applying the same average engine-hour cost against all elements of service does have the effect of assigning improper items of expense and investment against industry switching and weighing in all cases where the industries own and maintain the tracks on their own properties. It has been shown that maintenance of way and structures comprises about 14.7% of the switching costs. It would not be proper, however, to conclude that the industry and weighing costs, incurred by the carriers on the premises of industries owning and maintaining their own tracks, should be reduced by the latter percentage for the reason that, if the carriers were to set up separate engine-hour costs for each class of switching service, expenses eliminated on one class of service would be assessed against another class of

service and in the application of such elements of costs to the intra-district traffic the reduction of industrial costs would be partly offset by an increase in other costs.

It has been shown by the shippers and admitted by the carriers that industrial switching is performed to some extent by lighter engines than those used in other services. The engine-hour costs for industrial and weighing service should be somewhat less due to this factor.

Certain computations have been made by both shippers and carriers to show the effect of setting up separate engine-hour costs for industry switching. No attempt will be made to explain the details of these calculations except to state that various assumptions have been made by both parties which make the results doubtful. The effect on the total switching costs after making a complete redistribution of engine-hour costs ranges from 2 to 4% reduction in the total switching costs. The carriers' computation shows a reduction of 2% which is claimed to be too insignificant to warrant the refinement of methods desired by the shippers. The contention of the carriers that a reduction of 2% in total switching costs does not justify revision of the methods of determining the costs is not well founded for the reason that numerous small adjustments, if not offset, will materially affect the final result. While neither of the calculations appears to be conclusive, the evidence indicates that a reduction in the total costs should be made for these errors.

Transportation of Locomotive Fuel

The carriers claim (Exh. 83, p. 122) that their cost data (Exh. 7-A) is understated by the failure to include cost of transporting locomotive fuel used by the Trunk Lines

where the coal was moved over their own rails. The carriers found that the average cost per engine-hour for locomotive fuel on certain switching roads was $2.42 while on certain Trunk Lines the average was $1.34.

The following table taken from carriers' Exhibit 2, indicates the cost per engine-hour for locomotive fuel on each of the seven Trunk Lines and eight Belt and Industrial Lines:

FUEL COSTS PER ENGINE HOUR

Trunk Lines (7 Roads)		Belt and Industrial Lines (8 Roads)	
C. R. I. & P.	$1.83	I. H. B. (Blue Island Hump)	$1.31
C. & N. W.	1.65	C. W. P. & S.	1.58
C. B. & Q. (Gen'l. Yd.)	1.51	C. S. L.	1.75
C. M. St. P. & P. (Milw. Div.)	1.45	Pullman	1.79
Pa. (55th St.)	1.44	Ill. Nor.	1.90
Pa. (59th St.)	1.44	C. & I. W.	2.25
C. M. St. P. & P. (Chicago Ter.)	1.22	I. H. B. (Other)	2.41
I. C. (Markham)	1.20	B. R. C.	2.47
I. C. (Chicago Station)	1.20	B. & O. C. T.	3.12
Pa. (Colehour)	1.20	I. H. B. (Gibson Hump)	3.23
E. J. & E.	.97		
C. B. & Q. (Other Sw. Dist.)	.64		
Av. as computed by carriers	$1.34		$2.42

The difference between the above averages computed by the carriers of $1.08 per engine-hour was assumed to represent freight charges paid by the switching roads.

If the carriers are correct in stating that the difference in cost of fuel per engine-hour represents transportation costs, it is exceedingly difficult to account for the great variations in these costs as shown by the above table.

For example, the fuel cost per engine-hour on the Chicago and North Western Railway Company is $1.65 while

for the Illinois Central Railroad Company it is $1.20, although both roads are Trunk Lines, and both have lines

into the coal fields. It is also impossible to account for the enormous difference between the fuel cost per engine-hour of $.64 on the Chicago, Burlington and Quincy Railroad Company and $1.83 on the Chicago, Rock Island and Pacific Railway Company. Likewise in the group of Belt and Industrial Lines we find a variation between the maximum and minimum cost of $3.23 and $1.31 respectively, although in each case transportation costs are supposed to be included. It is also surprising to notice that these maximum and minimum unit costs were determined by the same railroad, the Indiana Harbor Belt Railroad Company, the maximum being at their Gibson Hump Yard and the minimum at their Blue Island Hump Yard. A further disturbing factor is indicated by the fact that the fuel costs per engine-hour of five out of seven Trunk Lines (the first six items in above table), which are supposed to exclude transportation costs, are in excess of the Indiana Harbor Belt Railroad Company's Blue Island Hump unit cost which is supposed to include transportation cost.

The above facts furnish a clue indicating that there must be other factors besides the cost of transportation of locomotive fuel which affect the final unit cost of fuel per engine-hour. We have given this matter some study, and have concluded that there are many important factors which have a bearing on the final unit cost of the fuel per engine-hour.

A few of these factors are as follows:

1. Basic cost of fuel.
2. Cost of handling.

3. Heating values of various kinds of coal.
4. Quantities consumed by various types of engines.
5. Amount of non-productive engine time as related to net engine hours.

While there is no question that the Trunk Line Railroads are entitled to include as costs of the switching business the expense of transporting fuel over their own lines from the point of purchase to the District, they have utterly failed to make any proof as to the correct amount to be allowed. Fanciful calculations, such as those presented, are without meaning or value.

ABNORMAL COSTS—ONE WEEK TEST PERIOD

The shippers claim that the costs are overstated by reason of the fact that the unit costs developed in the test periods in the year 1927 were applied to the traffic moving in the month of September, 1926, in which latter period the volume of traffic of many industries differed materially from that of the test periods. It is claimed that many high unit costs resulting from small volume in the test period were applied to large volumes in September, 1926, and that this effect is not offset by the low unit costs.

In support of this contention the shippers have cited many instances (Exh. 83, pp. 25, 26, 27, 28, 29, 45, 49 and 146) where high element costs resulting from low volume in the test period were applied to large volumes in September, 1926. An illustration of the shippers' criticism is that of Pennsylvania Railroad Element No. 350, industrial switching at Albert Schwill & Co. During the test period of one week in October, 1927, four loaded cars were switched at this industry, producing an average cost of $15.83 per car,

(see note a) which cost was applied to 85 intra-district cars moving in the month of September, 1926. This is an example of the development of a high cost based upon low volume in the test period which was applied to a large volume in another period.

In addition to the illustrations cited above the shippers have made a computation (Exh. 83, p. 175) showing that the application of costs developed in the test periods to traffic of different volumes in September, 1926, resulted in a much higher average study cost of industry and team track switching than the corresponding average for the weekly study periods. The amount of these excesses are $.85 for single line hauls, $.60 for two line hauls and $.33 for three line hauls. Based on these figures the shippers conclude that the carriers' costs are overstated by the following amounts:

1 line hauls	$10,165.15
2 line hauls	6,895.20
3 line hauls	902.55

The carriers reply (Exh. 83, p. 176) to this criticism by stating that any increase in the cost by application of high unit costs is offset by a reduction from the use of many abnormally low unit costs. They also cite the average switching costs developed in the cost study as evidence of efficient operation, the inference being that these costs are reasonable for this traffic.

Note (a) This cost compares with the average for the Colehour district (in which this industry is located) on the Pennsylvania Railroad of $1.89 per car.

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It is extremely difficult to determine from the record the effect of this matter upon the costs developed in the study. The carriers' claim that high costs are offset by the low costs has some merit; however, it would take a great number of shipments at a cost *slightly* below normal to offset a few shipments at costs *much* above normal. This would necessitate a much greater volume of business in September, 1926, than during study periods, which condition is not shown by the evidence.

The carriers' method of developing costs in one period of such short duration and applying them to traffic moving in another period is so confusing and unsatisfactory that serious doubt must arise as to the accuracy of the final results.

DEMURRAGE AND WEIGHING REVENUES

In stating the revenues involved in this proceeding the carriers have included nothing for demurrage or weighing although the expenses developed by the carriers include the expenses relating to those services. The record does not contain sufficient evidence to determine the amount of such revenues pertaining to the intra-district movements or the amount of expenses in respect of such revenues. A check of the demurrage records for 1112 cars, moving during September, 1926, in intra-district traffic, was made by representatives of the Illinois Commission. A tabulation of the results of this investigation showed actual collections of at least $1.88 per car. While the latter figure cannot be considered to be representative of all the cars in the study, it does clearly indicate that demurrage is an item of revenue for intra-district business and should not have been omitted

by the carriers. The explanation given by the carriers in connection with this item, as also with several other items, that the adjustments were not made, because of their insignificant character is futile when it is considered that the cost study has been made up through a collection of a multitude of small amounts.

SUBORDINATION OF SWITCH MOVEMENTS

The evidence shows that there are numerous grade crossings in the District, particularly on the Belt Lines, and that the established operating practice of the carriers is to hold

switching traffic at such crossings for passenger and road freight trains to pass. An example is cited by the shippers (Exh. 13, p. 41) of the run of the Indiana Harbor Belt Railroad from its Lake Front yard to its Michigan Avenue yard, a distance of 1.7 miles, requiring simultaneous clearance over five Trunk Line roads which takes from 15 minutes to three hours with an average of 50 minutes. (See also Exh. 83, p. 42.)

The carriers admit that the switch runs are subordinated to passenger and road haul movements but insist that the delays are properly chargeable to the switching business (Exh. 83, p. 180). Since time is the basis of the cost study, whatever delays occurred during the test periods of 1927 were charged against the elements of transfer and interchange service developed during the test periods. These were later applied to the movements of switching district cars in September, 1926.

It is apparent that while the operating practice may be entirely justified in the interest of rapid passenger and road freight service, all time incidental to delays at crossings should not be charged against the adjunct service of

switching. There must be an equitable distribution of the time between the services benefited. It is apparent that with the complicated network of roads existing within the District, the delays incident to grade crossings must be considerable. The evidence is clear that an overcharge has resulted from the practice of the carriers in subordinating switching movements to through freight and passenger service, but the record does not disclose the extent thereof.

ERRORS IN TRANSFER COSTS

In the carriers determination of the unit costs of transfer movements, certain errors have been made. During the test period yard conductors made up work reports, classifying the work done by their trains during each assignment period. On these reports, designated as Form CS-1, the yard conductors showed the time devoted to each switching operation such as transfer and interchange movements. When these reports were tabulated, the number of cars handled per hour in each element or type of service was computed and the cost per engine hour was divided by the number of cars to determine the average cost per car for each particular operation.

The record (see Exh. 84, pp. 193, 204 and 209) shows numerous illustrations of consecutive transfer movements made by the same train in which there is no lapse of time between transfer, but the composition of the train in the different transfer had changed. It is apparent that the number of cars in a train cannot change without some time being required to pick up or set out the cars. All of the time in the instances cited has been charged to the element of transfer switching. The carriers have attempted to justify their *cost methods* on the ground that the *operating*

practice was in the interest of efficient operation. This explanation fails to show why proper apportionments of cost were not made between transfer and classification (or other) service. The final costs are distorted through the application of the incorrect element costs, but the exact effect cannot be ascertained from the record.

NO ALLOWANCE IN COST STUDY FOR INCREASES IN WAGE RATES SINCE 1926

The carriers' claim that the costs submitted are understated somewhat, due to certain increases in wage rates since the year 1926. While the carriers state that there have been increases ranging from 3 to 8% in the payrolls of the groups of employees involved, no evidence has been submitted to show to what extent these classes of employees have engaged in work relating to the District business, nor has evidence been submitted to show whether the increased wage rates have resulted in increased efficiency.

OMISSION OF SWITCH TRAFFIC PROPORTION OF COST OF MAINTAINING MAIN TRACKS ON TRUNK LINE RAILROADS

The costs submitted by the Carriers contain nothing for the switching traffic's proportion of maintaining main tracks on trunk line railroads. The formula used in preparing the costs makes no provision for this expense probably because of the difficulty in making an equitable distribution between the various classes of traffic. While the main tracks are used principally by the traffic other than the traffic under review, it is nevertheless true that the switching business should bear some portion of the cost of maintenance and that the cost study is understated thereby.

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OPERATING RATIO

All rates for service whether transportation or other service, generally should be sufficient to pay operating expenses and taxes and yield a fair return upon the fair value of the property used in performing the service. We have already discussed the evidence of cost of the service and

come now to the provision for taxes and return on investment.

No evidence was offered as to the portion of the carriers' property which is used in performing intra-district service or the value thereof. Neither was any evidence offered as to the amount of taxes chargeable to this traffic. Instead the carriers offered certain evidence as to the ratio (operating ratio) which in their opinion operating expenses should bear to the entire revenues; the difference between that per cent and 100 per cent representing the amount claimed for taxes and return.

The carriers' formula contains a figure of 66.67% representing operating ratio. This is simply a figure used to demonstrate the application of the formula and does not have any weight in determining the proper operating ratio applicable in a particular case.

The principal evidence of the carriers consists of data for the railroads of the country as a whole for the year 1926, indicating an operating ratio of 73.2% with a return of 4.4% on the investment. The carriers then attempted to show what operating ratio would have produced a return of 5.75%. This they claim to be 67.4%.

In this computation they seem to have made a very simple mistake in that they have assumed that whatever was added to the amount required for return would be deducted

from operating expenses. Other than this computation there is no indication that the carriers are willing to cut operating expenses on the traffic under review in order to produce a larger net income. Their computation should have been on the basis of increasing the revenues to provide the necessary return. On this basis expenses would remain at 73.2 cents for each original dollar of revenue but the

remainder of 26.8 cents would be increased to 32.6 cents making a new total revenue of $1.058. Of this revised revenue the operating expenses represented 69.2%. This is the true operating ratio developed from the carriers' figures for the country as a whole.

The carriers are not willing to accept the average operating ratio for the entire country, but claim that for the District an operating ratio of less than 66.67% should be used, the reason being given that with a greater investment per mile of road within the terminal limits a greater proportion of the revenues are required for taxes and return on the investment.

There is no question but that the investment per mile of road in the terminal territory of Chicago greatly exceeds the investment per mile of road outside of the terminal. However, the record is not clear as to what proportion of such investment may be properly allocated to the intra-district switching business. There is also the important question of whether the volume of traffic is also greater in proportion to the increased investment per mile of road.

The shippers have attempted to show by a comparison of operating expenses per mile that the traffic is much heavier in the terminal as compared with railroad operations generally. If duplicate mileage due to trackage

rights could be eliminated the computation would show still greater density.

The carriers object to the use of operating expenses as a test of volume of traffic and have made some estimates of car miles within the district comparing them with the car miles of the first operating division outside of the District. No evidence has been introduced as to the proper or actual operating ratio for the operating divisions adjoining the

District. Such operating divisions no doubt move a much greater volume of traffic per mile of road than the roads as a whole. Because of the unquestionable high traffic density of the operating divisions immediately adjoining the City of Chicago, a comparison, such as made by the carriers, would be unduly favorable to themselves. Since they are attempting to justify the use of an operating ratio determined from a study of the railroad operations in the country as a whole, their comparisons should have been between the District and the country as a whole, which, no doubt, would show a much greater difference in volume of traffic than was shown by the carriers' comparison with the adjoining operating division.

On the other hand the shippers' comparison of volume of traffic based on operating expenses per mile seems to have some value. Thus the monetary unit of the dollar is the basis of comparison. The carriers compare property values also on the basis of dollars invested. The carriers have based their evidence of the fair operating ratio upon computations of values, expenses and net incomes for the country as a whole in terms of the dollar. The amount required for a fair return and taxes will ultimately be in dollars. The ratio used to compute the provision for taxes and return will be applied to the particular operating ex-

penses of the District expressed in dollars. The fact that those expenses are *great* (as shown infra) will have a very definite result in *increasing* the amount provided for the fair return and taxes when the ratio is applied thereto. Therefore, in our opinion, operating expenses represent a reasonable index of the density of traffic.

It is contended that the intra-district switching business is more costly than other business due to the shipments

originating and also terminating at industries within the district which are said to involve higher industrial switching costs than at points outside of the District. The record also shows that the tracks in the District were not laid out to take care of this business which fact tends to create more costly operations. On the supposition that this business is more costly, an operating ratio higher than the average could be applied because the higher the operating expenses, the higher the operating ratio required to earn a fair return on the same value.

The record also indicates that a considerable portion of the industry tracks in the District are owned by the shippers on which the carriers are not entitled to any provision for taxes and return. This appears to be a matter of great importance, but unfortunately the record is not clear as to what proportion of the industry tracks are owned by the shippers. The application of an operating ratio, without ascertaining and giving proper effect to this matter would work serious injustice to the shippers.

The record also contains evidence as to operating ratios used in certain other switching cases. These ranged from 77.2% to 86.6%.

Other evidence was introduced by the shippers indicating that nine of the principal switching roads in the Chicago

territory would earn an average of 5.75% on their investment if their operating ratio was 72.2%. The record also shows that on the basis of the Interstate Commerce Commission's tentative valuation these same nine carriers would earn 5.75% if the operating ratio was 76.8%. The shippers contend that no operating ratio lower than 76.8% should be used.

A comparison of the details in Shippers' Exhibit 13 indicates that 48% of the "Switching Cost" in the study was incurred on railroads included among the nine carriers whose operations indicated an average operating ratio in excess of 76%. If the E. J. & E. is excluded from this computation the results indicate that 68% of the "Switching Cost" in the study was incurred on railroads included among the aforementioned nine carriers. It is also shown that eight out of the nine carriers used by the shippers in the study of operating ratios were included in the cost study.

While these nine switching roads handle a considerable volume of business other than intra-district switching, it has also been shown that they handled the major portion of intra-district traffic in the study. The shippers' evidence concerning these roads has the value of being closely related to the District, and to the traffic in question.

The process of determining the proper rate or revenues to be collected by having only one known quantity, namely, the operating expense, and applying thereto a percentage or operating ratio, which, in itself, is a very uncertain quantity, is a very unsatisfactory and haphazard method. The correct and complete proof which the carriers should have presented in this case would include proof of the fair value of the property used and useful in handling the Dis-

trict business, proof of a fair rate of return which they should earn on the said property, proof of taxes actually paid on said property and proof of the proper operating expenses in connection with said business. We recognize that the preparation of such proof would entail considerable work on the part of the carriers; however, we do not believe that fact is an adequate reason to justify the car-

riers in presenting only testimony as to an operating ratio, based upon operations in the country as a whole, involving not only this territory but other locations where conditions are very different, and including not only freight, but passenger, mail, express and all other classes of railway operations.

COMMODITIES

Evidence was submitted by various parties interested in the transportation of particular commodities, with the purpose of securing a continuation of present rates on those commodities. Some of the contentions advanced in connection with a number of the commodities moving in large volume, are hereinafter set forth:

Grain: At present wheat, corn, oats and other grains move in large part within the District on exceptions under the Lowrey basis, and it is proposed by the carriers to place grain generally upon the Lowrey basis, such proposal growing out of the general investigation of switching rates instituted by the Interstate Commerce Commission under its Docket 19610. The tariffs under suspension by this Commission do not propose to place the rates on grain and grain products on the Lowrey basis, but are under consideration here solely because of the general investigation ordered by the Interstate Commerce Commission.

It appears from the evidence that based upon the traffic analysis of September 1926, the principal grain movement consists of corn in two-line hauls, both interstate and intrastate in Illinois, although there is a substantial intra-district movement of all grains, in one, two and three-line hauls. This greater movement of corn may be attributed to the extensive manufacture of corn products within the

District, and to the facilities for drying wet corn for market with which the District is said to be especially equipped.

The testimony of the shippers generally concerned the manner of merchandising grain, total amount of available grain, and storage facilities around Chicago, the amount of grain in storage at various dates, and the so-called reciprocal and proportional switching charges on inbound and outbound movements at Chicago, compared with similar charges in various other switching districts such as St. Louis, Missouri; Minneapolis, Minnesota; Kansas City, Missouri, and Omaha, Nebraska. This evidence clearly indicates the importance of Chicago as a primary grain market. The carriers contend that charges per car in other switching districts, brought into comparison by the shippers, are either so-called "reciprocal" switching charges which are not in issue, or proportional charges which are incomplete unless combined with other charges of that class to make the through cross-town charge; and that the shippers' comparison is unaccompanied by any showing of similarity of conditions.

The principal witness for the grain interests urged that the charges for the intra-district switching of grain within the District should be absorbed by the carriers—at least to the extent of one intra-district switching service. The evidence does not show that the line-haul rates are adequate

to compensate the carriers for the additional switching service performed in the district; nor does it show that the intra-district movement should be considered in the light of transit arrangements or so-called "reciprocal" switching as suggested by the shippers' witness. They constitute distinct services and justify distinct charges when rendered.

The extent of the cross-town switching of grain, including the intra-plant movement, was shown to be as follows:

In 1921	20,851 cars.
In 1922	14,745 cars
In 1923	14,586 cars
In 1924	19,672 cars
In 1925	25,891 cars
In 1926	26,865 cars
In 1927	18,655 cars

The record shows that grain generally loads much heavier than the 60,000-pound minimum usually exacted on shipments in the District. It is contended that the present rates on grain which have always been less than the Lowrey basis in the District, are related to the entire line-haul grain rate structure and the competition with other grain markets and milling points, and that the present rates, if not absorbed, should be permitted to remain in effect.

Coke:

The coke interests were represented solely by the By-Products Coke Corporation of Chicago, with plant located at South Chicago, Illinois, which claims to be the largest producer of coke for the general market in the United States. This company carbonizes 1,500,000 tons of coal each year, and produces 1,250,000 tons of coke. In addition it owns and operates a blast furnace in South Chicago. Yard

tracks and scales are owned and maintained by the industry at its coke plant. The Chicago Short Line performs the switching at that point.

During the year 1926 the coke plant shipped 28,816 carloads of coke, light oil, ammoniacal liquor, and coal tar, of which 26,948 carloads were coke. The coke was distributed

as follows: 5,050 carloads in one-line hauls less than one mile in length; 12,099 in two-line hauls and 9,799 in three-line hauls. The one-line hauls were made in private cars for which no allowance is made. Of the two-line hauls 6,120 cars were destined to points outside of the District. The carriers submitted traffic statistics for the month of September, 1926, only, but measured by that month there must be a considerable movement of coke in addition to that of the By-Products Corporation. The carriers show for that month a total movement of 6,716 cars. While the shipper herein named estimates that ninety per cent of its coke moves in Illinois intrastate traffic, the carriers' statistics show that about fifty-eight per cent of the total movement of coke in the District is interstate. The carriers' statistics for September 1926, show that the distance of one-line hauls ranges from 1.3 to 11.97 miles; two-line hauls 2 to 56.9 miles; and three-line hauls 8.5 to 37.4 miles. The following shows the average distances of those hauls and the weighted average revenue at present and proposed Lowrey basis of rates:

Interstate				Illinois				Indiana			
Cars	Average Distance	Revenue Per Ton		Cars	Average Distance	Revenue Per Ton		Cars	Average Distance	Revenue Per Ton	
		Present	Proposed			Present	Proposed			Present	Proposed
	(miles)	(cents)	(cents		(miles)	(cents)	(cents)		(miles)	(cents)	(cents
					One-Line						
3	(1) 7.0	50	60	55	3.95	50	60	....	.....	....	....
3374	(1) 11.97	60	60	.....	.....	.....	.....	548	(1) 11.97	60	60
37	(1) 11.97	12	12	478	5.94	40	40	....	.....	....	....
					Two-Line						
138	23.84	50	70	1239	7.30	50	70	....	.....	....	....
12	46.82	73	87	14	12.79	71	88	....	.....	....	....
277	(1) 12.70	45	45	.....	.....	.....	.....	....	.....	....	....
					Three-Line						
....	.....	....	....	410	25.95	60	80	....	.....	....	....
....	.....	....	....	78	28.24	76	92	....	.....	....	....
....	.....	....	....	53	10.29	50	71	....	.....	....	....
3841				2327				548			

(1) Actual Distance as shown in Exhibit 11-A.

Indiana Distances apparently in error. E. J. & E. mileage tariff I. R. C. 565 shows fr Gary to Stockton distance of 3.89 miles (See Exhibit 84, Page 188).

Evidently the heaviest movement is in one-line interstate hauls at the rate of 60 cents per ton for a haul of 11.97 miles, which is ten cents over the present Lowrey basis. No increase is proposed in that rate. There is a substantial one-line movement in Indiana and a heavy three-line movement in Illinois. The Indiana one-line movement is on a rate ten cents per ton above the present Lowrey basis. This leaves a substantial tonnage now moving on rates less than the present Lowrey basis with respect to which no change is proposed, together with a somewhat smaller tonnage which now moves on rates considerably over the present Lowrey basis, respecting which an increase is proposed. Doubtless some of the latter tonnage moves over the E. J. & E. and some deliveries by the Chicago and North Western

Railway and Chicago, Milwaukee, St. Paul and Pacific Railroad in the so-called outer district, for which an arbitrary of one-half cent per hundred pounds is added to the Lowrey rate.

The By-Products Coke Corporation subscribes to a uniform basis of rates, provided no increase is made in the present rates, admitting that an additional charge for the use of team-tracks would be justified. The testimony in protest of higher rates refers to an increase of approximately $170,000 per annum in its transportation charges on coke alone; to the use of private cars in the one-line hauls for which no allowance is received; and to certain elements of service contained in the carriers' costs which the shippers claim should be eliminated. The movement in private cars is Illinois intrastate and at rates which are ten cents per ton under the Lowrey basis.

A witness for the By-Products Coke Corporation testified that a large portion of the cars which they send out under load, whether for line haul or switching movement, are cars which have previously come into the plant under load.

Sand, Gravel and Crushed Stone

These commodities are almost invariably classed together for rate-making purposes. The producers of crushed stone assert that gravel is produced and shipped largely from nearby points outside of the District which are located on trunk-lines able to make local delivery and that the points of production of crushed stone within the District are located on switching roads which require a connecting-line delivery. It is shown that gravel now moves from nearby points outside of the District on single-line rates of 65 cents per ton, while the crushed stone re-

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ferred to moves within the District on two-line switching rates of 50 cents per ton, which under the proposed adjustment would be increased to 70 cents per ton, resulting in a spread of five cents over the gravel rates.

A witness for the crushed stone producers stated that the cost to produce a ton of stone is two to three and a half times greater than the cost to produce a ton of gravel. Exhibits 40 and 41 introduced in evidence indicate that the average per-car weight of crushed stone within the District for the years 1925 and 1926 was 53.74 and 53.47 tons respectively. Other exhibits of record indicate that the preponderance of the movement of crushed stone is Illinois Intrastate movement.

The producers of crushed stone within the District are in accord with the general plan of a uniform rate basis and are not in favor of a zoning plan, due, as alleged, to the discrimination that generally results therefrom. It is suggested, however, that if there is any change to be made in the present rates on crushed stone, the following basis be adopted:

Weight (pounds)	One-Line (per car)	Two-Line (per car)	Three-Line (per car)
60,000	$12	$15	$18
80,000	16	20	24
100,000	20	25	30

The adoption of the foregoing suggestions would be a departure from either the present or proposed Lowrey basis. It would result in a decrease in the present one-line charge and decreases in all charges under the proposed basis.

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Some general statements were made by the interested shippers of these commodities showing the availability of

present and potential transportation by water within the District, in competition with transportation by rail, and the stimulation of delivery by motor trucks in the event of an increase in the rail rates.

The producers of sand which is brought into the District for distribution, submitted testimony of a character somewhat similar to that submitted by the producers of crushed stone.

Lumber

The Chicago Retail Lumber Dealers' Association representing 135 lumber yards out of a total number of approximately 258 in the District, submitted testimony to the effect that the present rates and a uniform rate basis are satisfactory to its members. Lumber generally moves on the Lowrey basis, and under the tariffs filed in this proceeding it is proposed to increase the rates to 3, 3½ and 4 cents per hundred pounds, respectively, for one, two and three-line hauls. These shippers urge that the present rates be retained and state that from 4000 to 5000 car-loads of lumber, per year, are switched within the District, but that 80 per cent of the entire lumber movement is by truck. It is contended that a still larger tonnage will move by truck if the present rates are increased. It is also contended that a substantial number of carload shipments of lumber does not load to the minimum weight of 60,000 pounds, which has the effect of increasing the actual freight cost per hundred pounds.

Corn Products

This testimony was presented by the Corn Products Refining Company of Argo, Illinois, and the American Maize

Products Company of Roby, Indiana, both located within the District. The principal products of corn are starch, syrup, sugar, oil, gluten feed and meal. The Corn Products Refining Company owns and maintains seventeen miles of track, representing an investment of $630,000, and the American Maize Products Company three miles of track, representing an investment of $120,000 within their respective plant enclosures. These facilities are used both for line-haul and intra-district switching operations, with the former predominating. In opposition to any increase in the rates these producers show that the greater part of their shipments within the District weigh less than the minimum of 60,000 pounds, which results in the payment of average freight charges from six to nine miles per hundred in excess of the rates now in effect. This is not due to the inability of observing the minimum in physical loading, but is done to meet the competition resulting from the lower minima of 36,000 and 40,000 pounds, applicable in connection with the road haul movements.

These producers contend that transit rates should be published on corn in, and the products out, destined to points in the District, with provision for the absorption of switching charges. They assert that switching charges are absorbed at St. Louis, Missouri, and East St. Louis, Illinois, on the products of corn milled at these points, and on sugar out of storage at Chicago for delivery in the District, and which originates on the Chicago and North Western Railway Co. and connections west of the Mississippi River. Comparisons were also made of the switching charges at Chicago with the charges within other switching districts such as Buffalo, New York; Detroit, Michigan; Cincinnati, Ohio, and Boston, Massachusetts, but no showing was made

of comparative conditions which is required in order to make the comparisons of value. These shippers contend that lower rates should prevail in the District because of the greater density of switching traffic. In a large measure, the testimony involved transit privileges and line-haul rates alleged to be prejudicial to Chicago and preferential to other remote points.

Tar Products

This item embraces roofing and paving tar, paving pitch and some creosote oils. The products move almost entirely in private tank cars, for which no allowance is made. The record indicates that the tar products generally move on the full Lowrey basis. The Chicago & Illinois Western Railroad Company publishes a one-line rate of $9.00 per car for the comparatively short haul applicable on Illinois Intrastate traffic. It handles five or six cars a day on that rate. That carrier is desirous of continuing the rate of $9.00 rather than be deprived of the business which, it was testified, would be diverted to water transportation if the rate is increased.

The use of private tank cars for the transportation of tar products which results in the elimination of per diem charges and costs to carriers for maintenance of equipment and other costs incidental to ownership, was especially stressed. Comparison was made of the average earnings of $22.50 on certain loaded tank-cars of coal tar with the approximate cost of $11 for handling the car in a three-line movement. It does not appear, however, that the cost for the empty movement was considered and ordinarily the use of private tank cars for particular commodities exclusively involves 100 per cent empty movements.

Iron and Steel

Testimony was introduced by witnesses representing steel industries located within the District at Indiana Harbor, Indiana, and East Chicago, Indiana; South Chicago and Grand Crossing, Illinois, and on behalf of the steel industries outside of the District located at Chicago Heights and Evanston, Illinois. The testimony referred generally to the influence of freight rates upon the original location of the steel industries within the District; to the history of those rates; and to such transportation factors as the volume and heavy loading of iron and steel billets, pig iron and scrap iron, which ordinarily are influential in obtaining reduced line-haul rates, and the fact that shippers in Central Freight Association territory can ship iron and steel to the District on a minimum of 36,000 pounds, while it is necessary to pay on a 60,000 pound minimum on shipments moving within the District so cited.

Rates in effect at other switching districts were cited by the steel interests, which it is contended moves considerable traffic and indicates such rates are lower than the District rates. Exhibit No. 19 was introduced in evidence showing the movement of 100 cars. This exhibit shows that the average detention from the time the cars were set for loading at the plant, until they were released, was 4.7 days. From this showing it is contended that it is clear that there is no congestion in the District, evidenced by the prompt handling of the cars.

The witness introducing Exhibit No. 19 desired to have the Lowrey basis of rates continued with certain exceptions to take care of special movements, and contends that any increases in the switching rates will divert a large volume of tonnage to the highways.

It is further shown that most of the outbound tonnage from the steel mills is loaded in cars which were received under load.

Railway Equipment

Freight, passenger, work and other equipment on its own wheels is generally hauled within the District at a per-car rate, but rates per 100 pounds are published by certain carriers. The charges for this service differ widely, and rates are not upon the Lowrey basis. It is the desire of the carriers as well as the manufacturers to continue to move this equipment on the excepted rates. A number of the carriers contemplate no change in these rates. In instances where increases are proposed, the increased rates will continue to be upon a per-car basis, or upon a weight basis lower than the Lowrey basis. Railroad equipment was not included in the carriers' cost study. It appears that new cars frequently move in train lots directly from the yards of the car companies to connecting line purchasing the car.

Other Commodities

Testimony similar to that already discussed was presented in connection with brick, building tile, coal and coke, and various other commodities. These commodities move within the District in carrier equipment, except in the case of some coal and coke shipments.

EX-LAKE TRAFFIC

Switching rates on Ex-Lake traffic moving directly or indirectly between docks and industries within the District are generally higher than on ex-rail traffic. The record indicates that at various times the tariff provision exclud-

ing ex-lake traffic has been withdrawn by certain carriers and subsequently reinstated. Under the proposed tariffs certain of the carriers have withdrawn the restriction. The present switching rates on ex-lake traffic range from 60 to 100 per cent higher than rates on corresponding ex-rail traffic. The proposed rates over the lines of carriers which do not intend to withdraw the restriction would range from 43 to 100 per cent higher on ex-lake traffic than on corresponding ex-rail traffic.

The shippers, through the Chicago Association of Commerce urge that all restrictions be removed from ex-lake traffic and that it be accorded the same level of rates as ex-rail traffic. It is stated that thousands of dollars have been spent to increase the facilities for the handling of lake traffic and that the continuance of the rule excepting ex-lake traffic will greatly retard the development of Chicago as a port, and minimize the benefits resulting from the improvements in the water service.

As hereinbefore stated, under the proposed tariffs certain of the carriers have withdrawn the restriction against the application of the Lowrey Basis of rates on ex-lake traffic. There is nothing in the record to indicate that the carriers proposing to eliminate this restriction should not be permitted to do so, but there is sufficient evidence to indicate that the removal of this restriction is desirable. Although there is no proposal before this Commission with reference to other carriers, defendants herein, no objection should be made to the proposals under suspension with reference to ex-lake traffic whereby certain carriers propose to remove their restriction against the application of the Lowrey basis of rates.

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GENERAL

Exhibit No. 97 shows the distribution of all cars moving in the District during the month of September, 1926, as between Illinois intrastate, Indiana intrastate, and interstate traffic. This Exhibit shows that 33.3 per cent of the total traffic moved Illinois intrastate, 6.4 per cent moved Indiana intrastate, or a total of 59.7 per cent of intrastate traffic, while the interstate movement represents 40.3 per cent of the total. This illustrates the importance of the intrastate movement as compared with the interstate.

The relative length of haul of intrastate and interstate switching district cost study cars has been taken from Exhibit No. 97, with the following result:

	Intrastate		
	Illinois	Indiana	Interstate
One-line hauls—Average haul (in Miles)	14.7	6.3	15.0
Two-line hauls—Average haul (in Miles)	15.9	7.3	27.5
Three-line hauls—Average haul (in Miles)	23.4	....	34.2

It will be noticed that the average one-line haul in miles, for Indiana intrastate traffic is 6.3 miles, while the interstate haul is 15 miles; the average for the two-line hauls on Indiana intrastate traffic is 7.3 miles, while the interstate average is 27.5 miles.

The record shows that at the beginning of this proceeding the carriers were generally in favor of the Lowrey basis of rates, and were of the opinion that they had been a de-

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cided advantage to both the shippers and carriers in the District.

Exhibit 64 was introduced at the May, 1928, hearing by

Witness Galligan, showing the exceptions in which no changes were proposed. At that time no proposal had been made by the carriers with reference to the elimination of various exceptions to the Lowrey basis, but at the hearing in September, 1928, carriers made an entirely different proposal and filed Exhibit 85 showing the rates to be increased, proposing to eliminate many other exceptions to the Lowrey basis. Tariffs have not been filed covering proposed increases in certain Indiana intrastate rates, and while those rates may be properly before the Interstate Commerce Commission in its Docket 19610, they are not before the Public Service Commission of Indiana.

It is contended that the development of industry in the District is due, in a large measure, to the cooperation of the carriers in the establishment of the Lowrey basis, which arose as a voluntary agreement between the carriers. It is further contended by the protestants that the destruction of the Lowrey basis or the establishment of prohibitive switching rates will greatly interfere with the development and expansion of the industrial district of Chicago, and that the disruption of business in such a fashion should not be permitted by the Commission on such a showing as the carriers have made in this proceeding.

It appears from the evidence that the Lowrey basis of switching rates has been of great advantage to both the shippers and carriers alike. The shippers are almost unanimously in favor of retaining the present system of Lowrey rates with exceptions thereto, and as hereinbefore

stated, at the beginning of this proceeding, the carriers likewise proposed to continue many exceptions to the general basis, and admitted that such rates had been advantageous to both parties.

The protestants contend that if the proposed increases become effective, the charges resulting therefrom, will, in many cases, nullify investments, compel the relocation of industries, and the substitution of highways or waterways for all rail movements. There is much evidence in the record to the effect that a substantial increase in switching rates in the District will result in the diversion of considerable additional traffic to the highways and to the waterways. The record shows that the District has many improved highways, making it possible for a large volume of tonnage to move expeditiously in trucks. An exhibit of record shows the navigable waters in the District. A number of witnesses testified as to the extent of present movement via the highway and waterway and the possibilities in case higher rates are put into effect. It appears clear that these competitors have already made important inroads upon the rail traffic in the district, and with the construction of additional public highways will, no doubt, absorb more of the business. We do not believe this to be an idle threat. A material increase in the present rates would, no doubt, divert traffic from the railroads, not only through the motor truck and barge competition, but by relocation of industries and other rearrangements, which would largely offset the revenue the carriers expect to receive from such increase.

As hereinbefore stated, this proceeding is the outgrowth

of the decision of the Interstate Commerce Commission in Docket 15110, *Jones & Laughlin Steel Corporation versus B. & O. R. R., supra.* No general investigation of the rates in the District was instituted by the Public Service Commission of Indiana; and therefore since no switching rates, other than those proposed in the suspended tariffs, are be-

fore this Commission, no action other than passing upon the reasonableness of the proposals, based upon the evidence submitted, can be taken by this Commission.

The review of a rate adjustment so important to an industrial center, such as Chicago, can not be taken lightly by the Commission. The welfare of the carriers and the growth of industry at Chicago are closely related. The traffic moving within the District reflects the development of manufacturing and of other enterprises within the District, and as this traffic increases, the line-haul traffic of the carriers also increased, as in many instances the intra-district movements of raw materials result in subsequent line haul movements of finished products.

FINDINGS

The burden of proving that the increased charges proposed are just, reasonable and lawful is upon the respondent carriers. Carriers depend upon the cost study as their sole justification for the proposed increases in switching rates. The record is entirely lacking in traffic evidence upon which the Commission could find that the proposed rates are justified.

It is contended by the shippers that the cost study made in this proceeding must be disregarded as it constitutes no fair basis of evidence as to what the service costs the car-

riers. It is further contended that the study ignores the fundamental fact that switching is performed as an accessorial service to the primary purpose of road-haul service and that it should not bear the total burden of delays caused by the road-haul trains.

A decision of the Interstate Commerce Commission was referred to by the shippers in the cause involving *Switching*

Rates at St. Louis and East St. Louis, 120 I. C. C. 216, where the Coverston-Saur formula for arriving at costs was involved, wherein the Commission said:

> "Like others, the one before us contains some flaws and irregularities, but there is nothing surprising about the cost per-car shown. They are such as we can expect to find in a large terminal district. Upon the whole we see no reason for taking the respondent's cost figure as indicating that switching in the St. Louis District is a rather expensive service. A *cost study is ordinarily little more than a very rough indication, and even if unusually comprehensive and exact, it should not be the sole basis for fixing rates. The value of the service to the shipper, and many practical considerations, may be of equal or greater importance.*"

We are of the opinion that the cost study upon which the carriers have relied in these proceedings as a basis for increasing their rates is so inaccurate that it is not a reliable guide as to the actual costs of the service rendered.

After giving full weight and consideration to the evidence presented in these proceedings, we are of the opinion that it is clearly insufficient to justify the increased rates proposed, or any change in the present rates.

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The Commission having considered the evidence both oral and documentary and statements of counsel and being fully advised in the premises is of the opinion and finds:

(1) That the traffic included in the cost study moving over certain railroads selected by the carriers is not representative of the intra-district traffic as a whole;

(2) That even approximate costs of handling the study cars cannot be determined from the present record;

(3) That the record is entirely silent as to the costs of handling the "other" cars not included in the study;

(4) That the record does not contain sufficient evidence to determine the proper amount to be allowed for taxes and return on investment;

(5) That the proposed changes in rates involved in these proceedings have not been justified;

(6) That the schedules under suspension in this proceeding should be ordered permanently cancelled as of November 10, 1931, and it will be so ordered.

IT IS THEREFORE ORDERED BY THE PUBLIC SERVICE COMMISSION OF INDIANA, that the respondent carriers herein, be, and they are hereby notified and required to permanently cancel said schedules under suspension in this proceeding, on or before November 10, 1931, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law.

IT IS FURTHER ORDERED, that the proceeding in this cause, be, and the same is hereby dismissed and discontinued.

ELLIS, CUTHBERTSON, WEST, McCARDLE, CONCUR.

Singleton Absent.

APPROVED AUGUST 26, 1931.

(SEAL)

ATTEST: FRED I. KING,
Secretary.

APPENDIX "A"

CHICAGO SWITCHING DISTRICT DEFINED

Beginning at a point on the shore of Lake Michigan, due north of Clarke Junction, Indiana; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Indiana), thence southwesterly and south just west of the Elgin, Joliet & Eastern to but not including Ivanhoe, Indiana; thence southwesterly to and including Hessville, Indiana, thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Illinois; thence northwesterly west of the Pennsylvania (Logansport Division) to a point just south of Dolton, Illinois; thence southwesterly to a point just south of Homewood, Illinois; thence northwesterly just west of the Grank Trunk to a point just west of Blue Island, Illinois; thence north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Illinois; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Illinois; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Illinois; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west of Melrose Park, Illinois; thence west just south of the Chicago & North Western to and including the Proviso transfer yard of that company; thence north to Addison Street; thence east to a point south and west of Godfrey

yard on the Chicago, Milwaukee, St. Paul & Pacific; thence to a point just north of the Chicago, Milwaukee, St. Paul

& Pacific; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie to and including Des Plaines, Illinois; thence southeasterly just east of the Chicago & North Western Railway to the city limits of Chicago; thence east just north of the said city limits of the Mayfair cut off of the Chicago & North Western; thence northeasterly just west of the Chicago & North Western to and including Greenwood Street Station; thence southwesterly just east of the Chicago & North Western to the city limits of Chicago; thence east just north of city limits to the east line of Chicago Avenue or Clark Street; thence northerly on the east line of Chicago Avenue 725 feet; thence east to the east line of Chicago, Milwaukee, St. Paul & Pacific; thence southeasterly to center line of Howard Street; thence easterly on the said center line of Howard Street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning.

APPENDIX I.

Schedules filed to become effective September 20, 1933, in compliance with the decision and order in Docket 19610, dated July 3, 1933.

THE ALTON RAILROAD COMPANY

Supplement No. 13 to Tariff No. 1171-N
" 13 to I. C. C. No. 5
" 11 to Ill. C. C. No. 5
" 14 to Tariff No. 1400-U
" 12 to I. C. C. No. 50
" 14 to Ill. C. C. No. 29
" 13 to Tariff No. 2-M
" 13 to I. C. C. No. 55
" 13 to Ill. C. C. No. 34
" 15 to Tariff No. 783-G
" 15 to I. C. C. No. A-1653
" 15 to Ill. C. C. No. 700
" 30 to Tariff No. 662-K
" 26 to I. C. C. No. A-1959
" 30 to Ill. C. C. No. 889

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Supplement No. 16 to Tariff No. 10265-F
" 15 to I. C. C. No. 10817
" 12 to Ill. C. C. No. 462

THE BALTIMORE AND OHIO RAILROAD COMPANY

Local and Proportional Freight Tariff No. H-2687-Q, I. C. C. No. WL-10286, Ill. C. C. No. WL-822.

Local, joint and proportional Freight Tariff H 3454-E, various commodities, I. C. C. WL-10255 (Suppl. 40), Suppl. 40 to I. R. C. WL-1440

Local, joint and proportional freight tariff H 2865-X, Sand and loam, Suppl. 3 to I. C. C. WL 10205; Suppl. 3 to I. R. C. W. L.-1423

Local Freight Tariff of Switching Rates, I. C. C. No. 410; I. R. C. No. 196

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY

Supplement No. 16 to Tariff Ill. C. C. No. 104
" 16 to I. C. C. No. 327
" 17 to Ill. C. C. No. 162

Tariff I. C. C. No. 410, Ill. C. C. No. 217

Tariff I. C. C. No. 411, Ill. C. C. No. 218

Tariff I. C. C. No. 412, Ill. C. C. No. 219

Tariff I. C. C. No. 413, Ill. C. C. No. 220

THE BELT RAILWAY COMPANY OF CHICAGO

Supplement No. 1 to Local Freight Tariff No. 108-A, Ill. C. C. No. 107

Supplement No. 1 to Tariff No. 77-C
" 1 to I. C. C. No. 113
" 1 to Ill. C. C. No. 83

Local and proportional Freight Tariff No. 122-R, Ill. C. C. No. 141, I. C. C. No. 169

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

I. C. C. No. 11558

CHICAGO AND CALUMET RIVER RAILROAD COMPANY

Supplement No. 13 to Tariff Ill. C. C. No. 18

CHICAGO AND EASTERN ILLINOIS RAILWAY COMPANY
(Charles M. Thomson, Trustee)

Supplement No. 34 to Freight Tariff No. 325-B
" 34 to I. C. C. No. 158
" 29 to Ill. C. C. No. 128
" 18 to Freight Tariff No. 175-E
" 18 to I. C. C. No. 191
" 18 to Ill. C. C. No. 153
" 57 to Freight Tariff No. 600-B
" 57 to I. C. C. No. 200
" 57 to Ill. C. C. No. 167
" 13 to Freight Tariff No. 850-A
" 13 to I. C. C. No. 206
" 12 to Ill. C. C. No. 166
" 86 to Freight Tariff No. 90-C
" 86 to I. C. C. No. 214
" 86 to Ill. C. C. No. 174
" 16 to Freight Tariff No. 225-B
" 16 to I. C. C. No. 222
" 16 to Ill. C. C. No. 179
" 15 to Freight Tariff No. 95-B
" 15 to I. C. C. No. 232
" 15 to Ill. C. C. No. 187
" 47 to Freight Tariff No. 400-B
" 47 to I. C. C. No. 239
" 47 to Ill. C. C. No. 190
" 47 to Freight Tariff No. 505-A
" 47 to I. C. C. No. 241
" 47 to Ill. C. C. No. 196
" 7 to Freight Tariff No. 235-C
" 7 to I. C. C. No. 248
" 7 to Ill. C. C. No. 197
" 22 to Freight Tariff No. 500-C
" 22 to I. C. C. No. 258

" 22 to Ill. C. C. No. 206
" 18 to Freight Tariff No. 775-A
" 18 to I. C. C. No. 271
" 18 to Ill. C. C. No. 213
" 11 to Freight Tariff No. 800-B
" 11 to I. C. C. No. 284
" 9 to Ill. C. C. No. 223
" 17 to Freight Tariff No. 240-B
" 17 to I. C. C. No. 316
" 17 to Ill. C. C. No. 240
" 4 to Freight Tariff No. 300-A
" 4 to I. C. C. No. 379
" 4 to Ill. C. C. No. 272

CHICAGO AND ERIE RAILROAD COMPANY

Local Freight Tariff No. 452-H, I. C. C. No. A-7239, Ill. C. C. No. 217

CHICAGO & ILLINOIS WESTERN RAILROAD

Supplement No. 43 to Tariff G. F. D. No. 520-D
" 29 to I. C. C. No. 118-A
" 30 to Ill. C. C. No. 12-A

Local, Joint and Proportional Freight Tariff G. F. D. 516-E, I. C. C. No. 124-A, Ill. C. C. No. 20-A

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

Supplement No. 43 to Tariff G. F. D. No. 211-K
" 24 to Ill. C. C. No. 380
" 59 to Tariff G. F. D. No. 5600-I
" 28 to Ill. C. C. No. 555
" 43 to Tariff G. F. D. No. 6822-K
" 33 to Ill. C. C. No. 422
" 15 to Tariff G. F. D. No. 7100-O
" 14 to Ill. C. C. No. 694

" 8 to Tariff G. F. D. No. 8110-H
" 6 to Ill. C. C. No. 668
" 15 to Tariff G. F. D. No. 8256-T
" 8 to Ill. C. C. No. 660
" 23 to Tariff G. F. D. No. 8300-G
" 21 to Ill. C. C. No. 646
" 33 to Tariff G. F. D. No. 16141-D
" 24 to Ill. C. C. No. 503
" 7 to Tariff G. F. D. No. 16389-I
" 4 to Ill. C. C. No. 516
" 3 to Tariff G. F. D. No. 16920-B
" 3 to Ill. C. C. No. 683
" 3 to Tariff G. F. D. No. 8950-M
" 3 to I. C. C. No. 10250
" 3 to Ill. C. C. No. 655
" 19 to Tariff G. F. D. No. 5678-T
" 13 to I. C. C. No. 10317
" 13 to Ill. C. C. No. 685

Tariff G. F. D. No. 12575-M, I. C. C. No. 10371, Ill. C. C. No. 704

Supplement No. 24 to Tariff G. F. D. No. 13640-E
" 13 to I. C. C. No. 10041
" 17 to Ill. C. C. No. 604

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

Local and Proportional Freight Tariff No. 18-P, I. C. C. No. 58, Ill. C. C. No. 51

CHICAGO, AURORA AND ELGIN RAILROAD COMPANY, A. A. Sprague and Britton I. Budd, Receivers.

Freight Tariff No. 61-B, I. C. C. No. 62, Ill. C. C. No. 84

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

Supplement No. 27 to Tariff G. F. O. No. 7072-O
" 27 to I. C. C. No. 17074
" 27 to Ill. C. C. No. 1516
" 24 to Tariff G. F. O. No. 8350-N
" 24 to I. C. C. No. 17679
" 24 to Ill. C. C. No. 1568
" 10 to Tariff G. F. O. No. 2224-W
" 10 to I. C. C. No. 18061
" 10 to Ill. C. C. No. 1668

Tariff G. F. O. No. 1921-M, I. C. C. No. 18174, Ill. C. C. No. 1698

CHICAGO GREAT WESTERN RAILROAD COMPANY

Supplement 29 to Tariff 30-J
" 25 to I. C. C. 5292
" 24 to Ill. C. C. 195

CHICAGO JUNCTION RAILWAY (The Chicago River and Indiana Railroad Company, Lessee)

Freight Tariff No. 22-N, I. C. C.—C. J. No. 53, Ill. C. C.—C. J. No. 56

Freight Tariff No. 31-B, I. C. C.—C. J. No. 54, Ill. C. C.—C. J. No. 58

Freight Tariff No. 26-G, Ill. C. C.—C. J. No. 57

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Supplement No. 51 to Tariff G. F. D. No. 10700-G
" 51 to I. C. C. No. B-5749
" 40 to Ill. C. C. No. 317
" 31 to Tariff G. F. D. No. 12970-F
" 31 to I. C. C. No. B-5866
" 28 to Ill. C. C. No. 330

" 27 to Tariff G. F. D. No. 6976-J
" 27 to I. C. C. No. B-6104
" 20 to Ill. C. C. No. 365
" 14 to Tariff G. F. D. No. 3000-O
" 13 to I. C. C. No. B-6463
" 14 to Ill. C. C. No. 425
" 24 to Tariff G. F. D. No. 6100-I
" 24 to I. C. C. No. B-6080
" 16 to Ill. C. C. No. 360
" 7 to Tariff G. F. D. No. 6000-P
" 7 to I. C. C. No. B-6380
" 7 to Ill. C. C. No. 414
" 6 to Tariff G. F. D. No. 11300-G
" 6 to I. C. C. No. B-6425
" 4 to Ill. C. C. No. 419
" 3 to Tariff G. F. D. No. 10470-L
" 3 to I. C. C. No. B-6429
" Ill. C. C. No. 435
" 2 to Tariff G. F. D. No. 14961-J
" 2 to I. C. C. No. B-6460
" 2 to Ill. C. C. No. 424

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY

Tariff No. 59-N, I. C. C. No. 113, Ill. C. C. No. 88

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

Supplement No. 73 to Freight Tariff No. 26061-N
" 38 to I. C. C. No. C-11927
" 72 to Ill. C. C. No. 536
" 18 to Freight Tariff No. 24604-J
" 17 to I. C. C. No. C-12008
" 16 to Ill. C. C. No. 555
" 5 to Freight Tariff No. 27474-J
" 4 to I C. C. No. C-12226

" 5 to Ill. C. C. No. 591
" 37 to Freight Tariff No. 21432-P
" 29 to I. C. C. No. C-12231
" 29 to Ill. C. C. No. 593

CHICAGO SHORT LINE RAILWAY COMPANY

Joint Freight Tariff No. 201-I
Supplement No. 2 to Ill. C. C. No. 42
Joint Switching Tariff No. 209-A
Supplement No. 2 to Ill. C. C. No. 43
Switching Tariff No. 31, Ill. C. C. No. 45

CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD

Supplement No. 1 to Local Freight Tariff No. 113-C
" 1 to Ill. C. C. No. 37
Freight Tariff No. 88-F, Ill. C. C. No. 39, I. R. C. No. 74, I. C. C. No. 99

CHICAGO, WEST PULLMAN & SOUTHERN RAILROAD COMPANY

Supplement No. 29 to Local Freight Tariff No. 90
" 27 to I. C. C. No. 38
" 27 to Ill. C. C. No. 56
" 1 to Tariff G. F. D. No. 105
" 1 to Ill. C. C. No. 71
" 1 to Tariff G. F. D. No. 115
" 1 to Ill. C. C. No. 81
" 1 to Tariff G. F. D. No. 116
" 1 to Ill. C. C. No. 82
" 1 to Tariff G. F. D. No. 117
" 1 to Ill. C. C. No. 82
" 1 to I. C. C. No. 53

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Supplement No. 36 to Freight Tariff No. 56-I
" 32 to Ill. C. C. No. 434
" 56 to Freight Tariff No. 40-E
" 47 to Ill. C. C. No. 515
" 1 to Freight Tariff No. 46-Q
" 1 to Ill. C. C. No. 544
" 1 to Freight Tariff No. 139
" 1 to Ill. C. C. No. 547
" 2 to Freight Tariff No. 136-A
" 1 to Ill. C. C. No. 550
" 35 to Freight Tariff No. 53-H
" 19 to Ill. C. C. No. 514
" 21 to Freight Tariff No. 14-H
" 18 to Ill. C. C. No. 539
" 7 to Freight Tariff No. 4-E
" 7 to Ill. C. C. No. 546

Freight Tariff No. 56-J, Local and proportional rates on coal and coke Supplement 32 to I. R. C. No. 537

GRAND TRUNK WESTERN RAILROAD COMPANY

Supplement No. 38 to Tariff No. 520-L
" 28 to I. C. C. No. A-2336
" 27 to Ill. C. C. No. 96

Tariff No. 476-C, I. C. C. No. A-2555, Ill. C. C. No. 127

ILLINOIS CENTRAL RAILROAD COMPANY

Fifteenth Revised page 10 to Tariff No. 1-C, I. C. C. No. A-8213, I. P. U. C. No. A-1

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ILLINOIS NORTHERN RAILWAY

Supplement No. 32 to Tariff G. F. D. No. 77
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Joint Freight Tariff G. F. D. No. 109, I. C. C. No. 55, Ill. C. C. No. 79

Supplement No. 1 to Tariff G. F. D. No. 92
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Tariff G. F. D. No. 507-A, Ill. C. C. No. 292

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Local and Joint Freight Tariff on Sand and Gravel, I. C. C. No. 843, I. R. C. No. 533

Local Commodity Freight Tariff on Car Wheels, Suppl. No. 1 to I. R. C. No. 438

Local Commodity Freight Tariff on Ammonical Liquor, Suppl. No. 14 to I. R. C. No. 386

Local Commodity Freight Tariff on Iron and Steel Articles, Suppl. No. 1, I. R. C. No. 493

Local Commodity Freight Tariff on Manufacturing Plant Refuse, i. e., Waste Material, Supplement No. 1 to I. R. C. No. 441

MANUFACTURERS' JUNCTION RAILWAY COMPANY

Local Freight Tariff No. 1-F, I. C. C. No. 27, Ill. C. C. No. 17

THE MICHIGAN CENTRAL RAILROAD COMPANY (The New York Central Railroad Company, Lessee)

Supplement No. 46 to Tariff G. F. D. No. 9251-J
" 32 to I. C. C. No. 5890
" 23 to Ill. C. C. No. 672
" 76 to Tariff G. F. D. No. 9271-O
" 58 to I. C. C. No. 5932
" 47 to Ill. C. C. No. 696
" 68 to Tariff G. F. D. No. 9512-G
" 46 to I. C. C. No. 5724
" 44 to Ill. C. C. No. 566

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY

Supplement No. 21 to Freight Tariff No. 57-B
" 20 to I. C. C. No. 6174
" 15 to Ill. C. C. No. 240
" 1 to Freight Tariff No. 225-B
" 1 to I. C. C. No. 6540
" 1 to Ill. C. C. No. 299
" 15 to Freight Tariff No. 175-C
" 13 to I. C. C. No. 6519
" 10 to Ill. C. C. No. 295

THE NEW YORK CENTRAL RAILROAD COMPANY

Supplement to Tariff No. 3439
" 16 to Ill. C. C.—L. S. No. C-93

Tariff No. 3415-B, I. C. C.—L. S. No. 1789, Ill. C. C.—L. S. No. 916, I. C. C.—L. S. No. C-283, Ill. C. C.—L. S. No. C-115

Supplement No. 82 to Tariff No. 1429-A
" 64 to I. C. C.—L. S. No. 1649
" 46 to Ill. C. C.—L. S. No. 890
" 122 to Tariff No. 131-C
" 107 to I. C. C.—L. S. No. 1685
" 72 to Ill. C. C.—L. S. No. 897

Tariff No. 177-B, Joint, Local and proportional freight tariff on ashes, cinders, slag, Suppl. 4 to I. C. C.—L. S. 1775; Suppl. 4 to I. R. C.—L. S. 988

Tariff No. 177-B, Joint, Local and Proportional freight tariff on ashes, cinders, slag, Suppl. No. 5 to I. C. C. —L. S. 1775; Suppl. No. 5 to I. R. C.—L. S. 988

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

Tariff G. F. D. No. 26-O, I. C. C. No. 5581, Ill. C. C. No. 194

THE PENNSYLVANIA RAILROAD COMPANY

Supplement No. 8 to Ill. C. C. 11, Tariff 33-I
" 2 to Ill. C. C. F-455, Tariff 147-B. I. C. C. F-2097

Tariff 498-A, Ill. C. C. 59, I. C. C. 1070

Supplement No. 6 to Ill. C. C. 46, Tariff 146-D, I. C. C. 754

Tariff No 303A, Local Freight Tariff on Freight, all kinds, I. C. C. No. 1073, I. R. C. No. 95

PULLMAN RAILROAD COMPANY

Tariff G. F. D. No. 1-F, I. C. C. No. 26, Ill. C. C. No. 28

WABASH RAILWAY COMPANY, (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers)

Supplement No. 2 to Local Tariff No. F-7181
" 2 to I. C. C. No. 6773
" 2 to Ill. C. C. No. 913
" 39 to Tariff No. C-16493
" 33 to I. C. C. No. 6473
" 31 to Ill. C. C. No. 817
" 8 to I. C. C. No. 6590

C. W. GALLIGAN, Agent

Supplement No. 13 to Tariff No. 20-T
" 13 to I. C. C. No. 242
" 13 to Ill. C. C. No. 110
" 4 to Freight Tariff No. 36-A
" 4 to I. C. C. No. 255
" 4 to Ill. C. C. No. 116

Freight Tariff No. 10-B, I. C. C. No. 263, Ill. C. C. No. 121

Tariff No. 21-P, I. C. C. No. 264, Ill. C. C. No. 122

Tariff No. 23-Q, I. C. C. No. 265, Ill. C. C. No. 123

B. T. JONES, Agent

Supplement No. 12 to Freight Tariff No. 197-O
" 12 to I. C. C. No. 2538
" 12 to Ill. C. C. No. 314

B. T. JONES, Agent, and C. W. GALLIGAN, Agent

Supplement No. 9 to Freight Tariff No. 420-E, I. C. C. No. 2489, Ill. C. C. No. 307 (Jones), I. C. C. No. 222, Ill. C. C. No. 98 (Galligan)

And such other tariffs as may contain similar rates in the Chicago switching district.

[fols. 433 & 434] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Oct. 13, 1933

United States of America, one of the defendants in the above-entitled cause, for answer to the bill of complaint filed herein against it, answers and says:

I

United States admits that the allegations contained in the opening paragraph and in paragraphs I, II and III are true.

II

United States, for answer to paragraph IV, admits for the purposes of this suit that the allegations therein are substantially true as alleged, except that, it alleges that the first sentence of the first subdivision of said paragraph IV is incomplete in its statement concerning the scope of the proceeding conducted by the Interstate Commerce Commission therein described, and further alleges that said [fol. 435] investigation included not only interstate switching rates on carload traffic but also included "all rates and charges for the switching within the Chicago switching district of all carload traffic moving in interstate commerce, and their relation to like rates and charges for switching in intrastate commerce;" and excepting the statement in the second sentence of the second subdivision of said paragraph IV that the rates prescribed by the Commission became effective "by voluntary action of the carriers," and alleges the fact to be that said rates were prescribed in and were required by the Commission's order in that proceeding to be established by the carriers respondents to the order.

III

Answering paragraph V, United States says that the matters, things and conclusions therein alleged are irrelevant and immaterial to the question whether the order of the Interstate Commerce Commission issued July 3, 1933, is lawful and valid, for that, said order is not affected by,

and its validity may not be tested by anything done or omitted to be done by the Illinois Commerce Commission or the Public Service Commission of Indiana.

IV

United States admits the truth of the allegations contained in the first subdivision of paragraph VI, but alleges that the allegations contained in the second and third subdivisions thereof are argumentative, incompetent and irrelevant to the question whether said order of July 3, 1933, is valid.

[fol. 436] V

Answering paragraph VII, United States alleges that all the matters, things and conclusions therein set forth are argumentative, conclusory, and constitute neither a fair nor an accurate statement of the analysis, discussion and remarks of the Interstate Commerce Commission concerning the cost study therein mentioned, or of all the evidence of record before the Commission, or of its findings based thereon, and for a full, fair and complete statement of the Commission's remarks, discussion and statements concerning the evidence of record before it, including said cost study, and of its findings in said proceedings, United States respectfully refers the Court to the full text of the Commission's reports, which are annexed to the bill of complaint as Exhibits A and C.

Further answering said paragraph VII, United States alleges that the validity of said order of July 3, 1933, is not affected by, and may not be tested by the views, comment or action of the Illinois Commerce Commission or the Public Service Commission of Indiana; and denies that the validity of said order is affected by the Commission's denial of plaintiffs' petition for reargument and reconsideration.

VI

United States denies each and every allegation contained in paragraph VIII of the bill of complaint; and affirmatively alleges that the Commission's said order of July 3, 1933, is within the Commission's statutory power, and is lawful and valid in all respects; that all findings necessary or required by law were made by the Commis-

sion, and that all of said findings are fully and adequately supported by evidence properly received and considered [fol. 437] by the Commission.

VII.

Answering paragraph IX, United States denies the allegations thereof, and denies that the Commission's order is void for the reasons therein stated, or for any other reason. Further answering said paragraph, United States admits that the Commission made findings substantially as set forth in subdivisions (a) and (b) thereof, but denies that said findings are unsupported by evidence; but United States denies that the Commission made the finding which plaintiffs undertake to state in subdivision (c) of said paragraph IX, and alleges that, instead thereof, the Commission in truth and in fact found that:

While the evidence shows that the existing competition by motor truck is material, and indicates that this means of transportation will be utilized to a greater extent if the intrastate rates are increased, and that therefore, some additional tonnage in all probability will be lost to trucks, or diverted to barge and pipe-line movement, the record nevertheless is convincing that the carriers will derive a substantial increase in revenue if the intrastate rates are increased to the interstate basis, and we so find.

And, United States, further answering the last subdivision of said paragraph IX, alleges that the allegations thereof are argumentative, incompetent, irrelevant and immaterial, and require no answer, for that, (1) the recommendations made to the Commission by its examiners have no legal force or effect whatever, for the commissioners and not the examiners have power under the Interstate Commerce Act to fix rates and issue orders, and (2) the last sentence of said subdivision is mere surplusage and argument, and raises no issue of law, since it is insufficient as an allegation that the Commission denied plaintiffs a full and adequate hearing, or abused its discretion in refusing to grant their petition for further hearing.

[fol. 438] VIII

Answering paragraph X, United States denies that the Commission's order is unlawful or void for any of the rea-

sons alleged therein or for any other reason, and denies all allegations, both of conclusion and fact, which are properly pleaded in said paragraph. Further answering said paragraph, United States alleges that the Commission's said order of July 3, 1933, and all findings on which it rests, are fully and adequately supported by evidence, and that said order is lawful and valid in all respects.

Further answering said paragraph X, United States alleges that the matters, things and conclusions alleged and argued in subdivisions (a), (b), (c), (d), (e), (i), (j), (m), (n), (o), and all allegations of subdivision (p), excepting the first sentence thereof, are incompetent and irrelevant to any issue which may properly be raised in this suit, for the reason that, the allegations of said subdivisions, (1) consist of pure argument concerning the Commission's refusal to find and decide upon the evidence in accordance with plaintiffs' views as to what it proved, and (2) attempt to have this Court go beyong its jurisdiction and usurp the Commission's exclusive administrative and legislative power by weighing the evidence and deciding what conclusions and findings of fact the Commission should have made.

IX

United States denies the allegation in paragraph XI that the Commission's order is void or unlawful by reason of its indefiniteness or lack of precision in the respects mentioned in said paragraph, or in any other respect.

[fol. 439]

X

United States denies the allegations contained in paragraph XII of the bill.

XI

Answering paragraph XIII, United States says it is without knowledge as to whether the plaintiffs will tender in evidence before this Court a certified copy of the record of evidence before the Commission on which its order of July 3, 1933, was based.

XII

United States, answering paragraph XIV, admits for the purposes of this suit that tariffs have been filed substantially as alleged therein, but denies the remaining allega-

tions of said paragraph, and particularly denies that plaintiffs will suffer irreparable loss or injury, or any legal damage whatever, as a consequence of the Commission's said order of July 3, 1933.

XIII

Except as herein expressly admitted, United States denies each and every allegation contained in the bill of complaint, and in the several separate paragraphs and subdivisions thereof.

XIV

Further and affirmatively answering the bill of complaint, United States admits and alleges that the Commission made and issued its said order of July 3, 1933, that before issuing said order it conducted extensive hearings at which all parties, including these plaintiffs, were permitted and allowed full opportunity to be heard, that the Commission duly weighed and considered said evidence, [fol. 440] and from it made all proper and necessary findings; that said order and the findings upon which it rests are fully supported by the evidence; and that in making and issuing said order the Commission did not act arbitrarily, unreasonably or otherwise in excess of, or contrary to, its statutory power, or other law.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the plaintiffs, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Dwight H. Green, United States Attorney.

[fols. 441 & 442] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fols. 443 & 444] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 13, 1933

To the Honorable Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Supp. II, Title 28, Sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton. H. L. Underwood.

[fol. 445] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 13, 1933

Comes now the Interstate Commerce Commission, intervening defendant herein, hereafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

[fol. 446] I

Answering the introductory paragraph and paragraphs numbered I to III, inclusive, and paragraphs V and VI of the bill of complaint, the Commission admits that the allegations therein contained are true.

II

Answering paragraphs numbered IV, VII to XI, inclusive, the Commission admits and alleges that it made and entered its report and order dated July 31, 1931, specified

in the first subparagraph of paragraph IV of the complaint, in a proceeding then pending before it known and designated as Docket No. 19610, Switching Rates in Chicago Switching District; that said proceeding was initiated by the Commission on its own motion to determine the lawfulness of all rates and charges for switching on carload traffic moving in interstate commerce within the Chicago Switching District, and their relation to like rates and charges for switching in intrastate commerce, with a view to prescribing such reasonable, proper, nondiscriminatory, nonprejudicial, and otherwise lawful switching rates for said traffic as the facts and circumstances might appear to warrant. A copy of said order for investigation was served upon the Governor of the State of Illinois, the Governor of the State of Indiana, the Illinois Public Service Commission and the Public Service Commission of Indiana, as well as on numerous other persons, firms, associations and corporations. Certain other cases pending before the Commission and certain cases pending before the Illinois Commerce Commission, and a certain case pending before the Public Service Commission of Indiana, which said cases before the two state commissions involved the intrastate switching rates on some of the commodities moving within [fol. 447] these respective states in intrastate commerce within the said Chicago Switching District, were heard with the general investigation proceeding; that full hearings were held in which representatives of the said state commissions, the Board of Trade of the City of Chicago and the Acme Steel Company, plaintiffs in this suit, participated; that thereafter the Commission made, entered and served upon all the parties in said proceeding its said report and order of July 31, 1931, whereby the Commission found reasonable certain rates on all commodities, in carloads, moving in interstate commerce within the Chicago Switching District and required the establishment and maintenance of such rates by the carriers respondents in the proceeding, and for full information concerning its findings and requirements in the premises, the Commission respectfully refers the Court to its said report and order, which is attached to and made a part of the bill of complaint herein as "Appendix A," which said report and order the Commission incorporates by reference as a part of this answer. That in compliance with said order rates were estab-

lished and became effective December 10, 1931, and are now in effect.

The Commission further alleges that no order was made by it at that time as to intrastate rates within the states of Indiana and Illinois, the Commission expressing the hope "that both the Illinois Commerce Commission and the Public Service Commission of Indiana will bring their rates in harmony with the conclusions herein"; that thereafter the said state commissions found not justified the rates proposed for application on intrastate commerce within the respective states and by formal orders required cancellation of the schedules or tariffs containing said rates.

[fol. 448] The Commission further alleges that thereafter, following the failure of the said state commissions to bring their rates into harmony with the interstate rates authorized and required to be established and maintained by the Commission in its said order of July 31, 1931, and upon the application of the respondent carriers, it reopened the general investigation for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce in the said switching district to the rates theretofore prescribed by it for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers and traffic, or unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act; that further and full hearings were held which were participated in by a large number of parties interested, including the plaintiffs in this suit and thereafter the Commission made, entered and served upon all parties in said proceeding, including the plaintiffs herein, its report and order of July 3, 1933, referred to in the fourth subparagraph of paragraph numbered IV of the bill of complaint, and for full information concerning its findings and requirements in the premises, the Commission respectfully refers the Court to a copy of said report and order, which is annexed to and made a part of the bill of complaint herein as "Exhibit C," which said report and order the Commission incorporates by reference as a part of this answer.

[fol. 449] The Commission alleges that in the said proceedings and prior to the making, entering and serving of

its said report and order of July 31, 1931, and of its report and order of July 3, 1933, the parties thereto were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said reports and orders were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including the particular questions raised by plaintiffs in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceeding, including the plaintiffs herein, its said reports and orders; that said reports and orders included the Commission's findings of fact, decision, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid; that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its atten-[fol. 450] tion on behalf of the parties to said proceedings by their respective counsel, including all material matters covered by the allegations of the bill of complaint herein; that said orders of July 31, 1931, and July 3, 1933, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them, or without appropriate, adequate and sufficient findings for which there was support in the evidence; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Further answering paragraph numbered VII, the Commission avers that the allegations therein are argumenta-

tive; however, it denies that it made any error or adopted any improper method in giving consideration to the cost study referred to in said paragraph; the Commission avers that the said cost study was undertaken and made after a conference or conferences attended by representatives of the railroad carriers involved and the shippers interested in rates in the said Chicago Switching District; that the selection of the particular railroad carriers upon which the cost study was had was made by agreement at said conference or conferences and was the judgment of the said representatives that the railroads so selected were representative in respect of the traffic and other conditions in connection with transportation by rail in switching movements in said Chicago Switching District.

Further answering paragraphs numbered VIII to XI, inclusive, of the said bill of complaint, the Commission denies that its said order of July 3, 1933, is either unlaw- [fol. 451] ful or void for the reasons or in the particulars stated in said paragraphs or for any other reason or reasons or in any other particular; it denies that in the making of its reports and orders it acted without authority, or failed or omitted to perform any act or function necessary and requisite to comply with the requirements of the applicable law or in the discharge of its duties in the premises; it denies that its said order is uncertain or indefinite or lacking in precision as alleged in paragraph numbered XI.

Further answering paragraphs numbered X and XI, the Commission avers that the allegations therein are argumentative and present contentions as to the correctness of the Commission's findings of administrative facts as set forth in its said reports of July 31, 1931, and July 3, 1933; and that said contentions and matters are such as are by the Interstate Commerce Act committed to it for determination as an administrative tribunal.

III

Answering paragraph numbered XII, the Commission denies that it erred in refusing to reopen the proceedings in Docket No. 19610; denies that it erred in refusing to vacate its order of July 3, 1933, or in refusing to set the case for further hearing, and denies that its said order is for that reason or any other reason void; on the contrary,

the Commission alleges that its action in denying said motion or petition was in the exercise of the discretion validly conferred upon it by the Interstate Commerce Act and that said action did not constitute an abuse of that discretion.

[fol. 452] IV

Answering the allegation contained in the second subparagraph of paragraph numbered XIV, the Commission denies that the operation of its said order of July 3, 1933, will subject plaintiff Acme Steel Company and others to irreparable loss and injury.

Except as herein expressly admitted, the Commission denies the truth of each and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements, findings, or conclusions of fact included in its said report and order of July 31, 1931, and its report and order of July 3, 1933, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and it hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by Daniel W. Knowlton, Chief Counsel, H. L. Underwood, Attorney.

[fols. 453-455] *Duly sworn to by William E. Lee. Jurat omitted in printing.*

[fol. 456] In United States District Court

[Title omitted]

Answer of Carrier Defendants—Filed Oct. 13, 1933

Come now

The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Chicago Terminal Railroad Company,
The Baltimore and Ohio Railroad Company,
The Belt Railway Company of Chicago,

The Chesapeake and Ohio Railway Company,
Chicago and Calumet River Railroad Company,
Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee),
Chicago and Erie Railroad Company,
[fol. 457] Chicago & Illinois Western Railroad,
Chicago and North Western Railway Company,
Chicago and Western Indiana Railroad Company,
Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, Receivers),
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago Short Line Railway Company,
Chicago, South Shore and South Bend Railroad,
Chicago, West Pullman & Southern Railroad Company,
Elgin, Joliet and Eastern Railway Company,
Grand Trunk Western Railroad Company,
Illinois Central Railroad Company,
Illinois Northern Railway,
Indiana Harbor Belt Railroad Company,
Manufacturers' Junction Railway Company,
The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee),
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Pere Marquette Railway Company,
Pullman Railroad Company, and
Wabash Railway Company (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers),
[fol. 458] defendants in the above entitled cause, now and at all times hereinafter saving and reserving to themselves all and all manner of benefit and advantage of exception

to the many errors and insufficiencies in the bill of complaint contained, and for answer thereto or unto such parts thereof as they are advised that it is material for them to answer, answering, say:

I

Answering paragraph 1 of the bill of complaint, these defendants admit the allegations therein set forth.

II

Answering paragraph 2, defendants admit the corporate existence of each defendant as is alleged in said paragraph and that the individuals named are trustees or receivers as set forth in said bill, and further admit and aver that each of the defendants and the lines of railroads named are common carriers engaged in the transportation of property in interstate commerce.

III

Answering paragraph 3, the defendants admit the purpose of the bill as therein set forth.

IV

Answering paragraph 4, these defendants admit that on May 11, 1927, the Interstate Commerce Commission instituted a proceeding as referred to therein, but deny that the [fol. 459] order of investigation was limited to an investigation of the interstate rates as is in said paragraph 4 set forth. These defendants allege that said order of investigation was as to the lawfulness of both the interstate and state rates within and between the States of Illinois and Indiana, respectively, in the Chicago switching district.

V

These defendants further allege that the Illinois Commerce Commission and the Public Service Commission (of Indiana) were notified of said investigation and co-operated and sat with the Interstate Commerce Commission at the several hearings had in regard to said investigation; that there were had several hearings before the Interstate Commerce Commission, the Illinois Commerce Commission and the Public Service Commission (of Indiana) sitting

jointly for the purpose of hearing testimony and receiving evidence on the subject matter of the general investigation, in which proceedings the plaintiffs named in said bill of complaint herein were parties. The Interstate Commerce Commission made and entered a report under date of July 31, 1931, which is referred to in paragraph 4 of the bill of complaint and is marked "Appendix A", and for full information as to its findings and requirements these defendants respectfully refer the court to said report and order. These defendants admit that on September 10, 1931, they filed their petition seeking appropriate findings and order authorizing and requiring them to establish the same switching rates found lawful and reasonable for interstate application to apply on intrastate commerce in the Chicago switching district within Illinois and Indiana.

[fol. 460]

VI

These defendants admit that on November 2, 1931, the Interstate Commerce Commission reopened the proceedings in Docket 19610 for further hearing with respect to the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce.

VII

These defendants further admit that on December 28, 1931, complaint was filed by Acme Steel Company and others, as is alleged in said paragraph 4, and admit that said complaint was given Docket 24950 and was set for hearing at the same time and place as the further hearing in Docket 19610 as is alleged in said paragraph of the bill of complaint. These defendants admit that a proposed report was issued covering the further hearing in Docket 19610 and the hearing in Docket 24950 in one proposed report as is alleged, but aver that the proposed report, which is attached to said bill of complaint marked "Exhibit B", is incompetent, irrelevant and immaterial to the issues raised in said bill of complaint concerning the validity of the order of the Interstate Commerce Commission herein assailed. These defendants admit that exceptions were filed by the plaintiffs named in said bill of complaint and oral argument was had, and that the Interstate

Commerce Commission issued its report and order dated July 3, 1933, which report and order is referred to in said paragraph 4 of the bill of complaint and a copy thereof is attached to the bill of complaint, marked "Exhibit C", and for full information as to its findings and requirements these defendants respectfully refer the court to said report and order.

[fol. 461]

VIII

Defendants allege that in said proceeding, prior to the making, entering and serving of said report and order, the parties thereto, including the plaintiffs herein, were and each of them was accorded the full hearing provided for by law; that in said hearing voluminous testimony was taken and other evidence bearing upon the matters involved in said proceeding was submitted to and received by the Interstate Commerce Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiffs herein; that at said hearings and subsequently both orally and in briefs filed in said proceedings, questions relating to the said matters were fully argued and submitted to the Interstate Commerce Commission for determination on behalf of said parties by their respective counsel, whereupon the said Interstate Commerce Commission determined said matters and made and entered its said report and order; that said report and order included the Commission's findings of fact, decision, conclusions and requirements in the premises and that upon the evidence aforesaid, and as shown in and by its said report, the Commission made findings and stated the conclusions upon which the said order is based.

IX

These defendants further allege that the findings and conclusions in said report were and are and that each of them was and is fully supported and justified by the evidence submitted in said proceeding as aforesaid; that in making said report and order the Interstate Commerce Commission considered and weighed carefully, in the light [fol. 462] of its own knowledge and experience, each fact, circumstance and condition contained in said evidence, including all material matters covered by the allegations of the bill of complaint herein; that said order of July 3,

1933, was not made and issued either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it; that in making said order the Interstate Commerce Commission did not exceed the authority which had been duly conferred upon it and these defendants deny each and all the allegations to the contrary contained in the said bill of complaint.

X

Further answering paragraph 4, these defendants admit that the order of the Interstate Commerce Commission authorized and required them to establish for intrastate switching in the Chicago switching district within Illinois and within Indiana the same rates as are contemporaneously applied to interstate switching of carload freight within the Chicago switching district, and admit that on August 15, 1933, the plaintiffs herein filed with the Interstate Commerce Commission a joint petition for reopening said proceeding in Docket 19610 and Docket 24950 for further hearing, and admit that these defendants filed a joint answer to said petition as is alleged in said bill of complaint, and admit that the effective date of the rates to be published in compliance with said order was by the Interstate Commerce Commission postponed from September 20, 1933 to October 20, 1933. The defendants allege, however, that said petition of August 15, 1933, on behalf of plaintiffs, copy of which is marked "Appendix D" and is attached to said bill of complaint, and the joint answer of these defendants dated August 24, 1933, attached to [fol. 463] said bill of complaint and marked "Appendix E", are incompetent, irrelevant and immaterial to the issues raised in said bill of complaint concerning the validity of the order of the Interstate Commerce Commission.

XI

Answering paragraph 5, these defendants admit that the rates filed with the Public Service Commission (of Indiana) and the rates filed with the Illinois Commerce Commission, as is alleged in said paragraph, were suspended by the Public Service Commission (of Indiana) and the Illinois Commerce Commission, and aver that at the hearing before the Interstate Commerce Commission in Docket 19610, the said state commissions sat with the Interstate

Commerce Commission, and at such hearings the issues raised by the suspension of the state rates by the Public Service Commission (of Indiana) and the Illinois Commerce Commission were consolidated and heard jointly and on a common record before the three commissions that were considering the evidence in Docket 19610.

Defendants admit that under date of August 26, 1931, the Illinois Commerce Commission issued a report, and likewise on the same date the Public Service Commission (of Indiana) issued a report, which reports are attached to the bill of complaint and identified as "Appendix G" and "Appendix H", respectively. Said defendants aver that said reports and orders of the Illinois Commerce Commission and of the Public Service Commission (of Indiana) are incompetent, irrelevant and immaterial to the issues raised in the bill of complaint herein.

[fol. 464]

XII

Answering paragraph 6, these defendants admit filing tariffs with the Interstate Commerce Commission establishing the same basis of rates for switching service in intrastate commerce within Illinois and within Indiana as at the same time applied to interstate commerce within the Chicago switching district, and aver that the report and order of the Interstate Commerce Commission of July 3, 1933, plainly indicate the traffic on which said rates are to apply.

XIII

Answering paragraph 7, these defendants admit that a part of the evidence presented to the Interstate Commerce Commission in justification of the measure of what the rates within the Chicago switching district should be in the hearing in Docket 19610, prior to the Commission's order of July 31, 1931, consisted of a cost study. The defendants aver, however, that much evidence, in addition to the cost study, was offered and received with respect to said switching rates both state and interstate within the Chicago switching district. The protestants in Docket 19610, and related cases, including the plaintiffs herein, offered evidence in opposition to the said cost study, all of which evidence the Interstate Commerce Commission in making its

report and order of July 31, 1931, considered and weighed carefully and made its findings of fact and conclusions thereon.

XIV

Defendants aver that in the complaint in Docket 24950 the complainants, including the plaintiff herein, the Acme Steel Company, and the alleged fifty-seven other corpo- [fol. 465] rations, individuals and associations similarly situated, presented evidence concerning the cost study which the Interstate Commerce Commission had considered in its former report and order of July 31, 1931, 177 I. C. C. 669 (Appendix A attached to said bill of complaint). Said Docket 24950 was for the purpose of the report and order consolidated with Docket 19610 and is disposed of in the Interstate Commerce Commission's report and order of July 3, 1933, 195 I. C. C. 89 (Exhibit C attached to said bill of complaint).

XV

Answering paragraphs 8, 9, 10, 11 and 12 of said bill of complaint, these defendants deny each and every allegation in said paragraphs contained, and further answering the allegations of said paragraphs these defendants expressly deny that the Interstate Commerce Commission was without power to enter the said order and deny that said order was or is invalid or unlawful or void or resulted in unlawfully increasing any intrastate rates for the reason asserted in any of said paragraphs or for any other reason. On the contrary, these defendants allege and aver that said order is a valid exercise of the power duly and lawfully conferred upon the Interstate Commerce Commission; and that in making and issuing said order the said Commission observed all the requirements of the law applicable to an order and proceeding such as there involved; and in and by said report the Commission in the exercise of the exclusive administrative powers conferred upon it by the Interstate Commerce Act found and determined from the voluminous evidence before it that the intrastate rates on switching within the Chicago switching district within Illinois and [fol. 466] within Indiana, in order to remove and to prevent unjust and unreasonable discrimination of the interstate rates by the state rates, should be not less than the rates contemporaneously applied by said defendants for interstate

switching service between points in the Chicago switching district. Defendants further aver that the evidence fully supports the findings, conclusions and order made by the Interstate Commerce Commission.

XVI

Answering paragraph 14, these defendants admit that they have filed with the Illinois Commerce Commission and with the Public Service Commission (of Indiana), to the extent that their lines operate within those respective states within the Chicago switching district, tariffs cancelling the intrastate rates, and have filed with the Interstate Commerce Commission tariffs containing rates in conformity with the order of the Interstate Commerce Commission of July 3, 1933. These defendants further admit that traffic will continue to move in intrastate commerce within the Chicago switching district in Illinois and Indiana as is alleged in said paragraph, and that on such traffic the increased rates required and ordered by the Interstate Commerce Commission for application to state traffic within the Chicago switching district in Illinois and in Indiana will be paid by the shippers and collected by the carriers. Further answering said paragraph, these defendants deny each and every allegation in said paragraph contained not heretofore admitted, answered, or denied.

[fol. 467] XVII

These defendants aver and allege that the bill of complaint does not contain either statements or allegations of fact which entitle plaintiffs to a preliminary or interlocutory order or injunction restraining and suspending the enforcement, operation and execution of the said order of the Interstate Commerce Commission until final determination of this cause, or, upon the final hearing herein, to a decree perpetually enjoining, suspending, annulling and setting aside the enforcement, operation and execution of said order. These defendants further aver and allege that the bill of complaint does not contain either statements or allegations of fact which show that the order of the Interstate Commerce Commission causes the plaintiffs, or any of them, or will cause said plaintiffs, or any of them, such legal injury as entitles them to maintain this suit.

XVIII

Except as herein expressly admitted, these defendants deny each and all of the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein or with either the statements or findings of fact included in said report and order of the Interstate Commerce Commission dated July 3, 1933, which report and order are hereby referred to and made a part hereof.

All of which matters and allegations, these defendants are ready to aver, maintain and prove as this Honorable Court shall direct.

Wherefore, these defendants pray that the relief prayed for in said bill of complaint be denied and that said bill of [fol. 468] complaint be dismissed at the cost of the plaintiffs.

Defendant Carriers named above, by J. N. Davis, One of Their Solicitors. H. I. Allen, J. R. Barse, D. P. Connell, J. N. Davis, P. F. Gault, Walter McFarland, H. D. Sheean, E. A. Smith, James Stillwell, Solicitors for Defendant Carriers.

Duly sworn to by J. N. Davis. Jurat omitted in printing.

[fol. 469] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In Equity. No. 13507

ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), Board of Trade of the City of Chicago, and Acme Steel Company, Plaintiffs,

vs.

UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY et al., Defendants

Narrative Abstract of Evidence and Proceedings Before I. C. C.

Lodged Jan. 23/33.
Filed Feb. 12, 1934.

[fol. 470] Abstract of evidence in the following proceedings before the Interstate Commerce Commission:

Docket No. 19610, being a general investigation ordered by the Commission upon its own motion;

Docket No. 20006 entitled "Illinois Slag & Ballast Company vs. Chicago, West Pullman & Southern Railroad Company et al.," and

Investigation & Suspension Docket No. 2900;

All of which said proceedings were consolidated for the purpose of hearing and disposition; and by agreement of parties entered of record at the respective hearings, the testimony taken in said consolidated proceedings was to be the testimony in each and all of said proceedings, so far as the same might be applicable to the respective cases.

By agreement of the parties and with the approval of the court, the original exhibits in said proceedings will be sent up, duly certified, and are not abstracted herein other than to refer to the number and the description thereof as offered and received in evidence.

[fol. 471] At a hearing in the above entitled consolidated proceedings, held at Chicago, Illinois, January 11, 1928, before Honorable J. B. Campbell, a member of the Interstate Commerce Commission, and Howard C. Faul and W. B. Wilbur, examiners thereof, with whom sat Messrs. H. M. Slater, K. E. Tholin and W. T. Taylor of the Illinois Commerce Commission, for the purpose of hearing Docket No. 17513, Illinois Slag & Ballast Company v. Chicago, West Pullman & Southern Railroad Company, et al.; Docket No. 17250, Illinois Commerce Commission v. Atchison, Topeka & Santa Fe Railway Company, et al.; and Docket No. 17269, Illinois Commerce Commission v. Chicago & Eastern Illinois Railway Company, et al., pending before the Illinois Commerce Commission and involving intrastate rates within and to and from the Chicago switching district; and H. S. McNeely of the Public Service Commission of Indiana, for the purpose of hearing Docket No. 8939, pending before that commission and involving intrastate rates within that portion of the Chicago district within the State of Indiana, moving wholly within Indiana; with the understanding that the testimony and evidence taken in the three interstate commerce proceedings set forth in the caption hereof should likewise be considered as taken in the four cases above referred to, pending before the two state commissions respectively, and

constitute the record in said state proceedings so far as pertinent, and that the appearances taken in the interstate proceedings above referred to should be considered the appearances in the state proceedings; and at said hearing [fol. 472] before the Interstate Commerce Commission in the cases pending before it, the witnesses hereinafter named were called and presented in behalf of the respondent railroads in the order in which their names appear, and under oath testified in substance as follows:

E. F. Saur

I am a special agent of the Pennsylvania Railroad with forty years of service embracing work in all different departments, the last twelve of which have been devoted to studies, the preparation of exhibits, and giving testimony in defense of rate cases before interstate and state commissions. (Tr. 1, 22, 23.)

The railroads are making a study of switching in the Chicago district to determine the average cost of switching cars between points therein, separated as between one-line, two-line and three-line hauls, and as to commodities according to the Commission's commodity classification of freight tariffs. (Tr. 23.)

To make the study a committee was appointed, originally the representatives of seven railroads, which made the traffic analysis covered in exhibits submitted at the February 16, 1927, hearing. (Tr. 23.) The committee was subsequently changed to eight representatives from eight selected Chicago railroads, to make cost studies, and later seven additional representatives of Chicago railroads were [fol. 473] added to that committee. Since the beginning I have been chairman of the cost committee, which now includes representatives of fifteen railroads. (Tr. 24.) We had a formula by which we made the cost studies, but the study is not yet complete. (Tr. 24.) Some preliminary work has been done and put in the form of an exhibit. The fifteen study railroads included in the exhibit (hereinafter referred to as "Ex. No. 1, Witness Saur") include the original eight, the Burlington, the North Western, the Milwaukee, the Pennsylvania, the Indiana Harbor Belt, the Baltimore & Ohio Chicago Terminal, the Belt Railway, and the Elgin, Joliet & Eastern; and the seven added roads are the Illinois Central, the Rock Island, the Chicago & In-

diana Western, the Chicago Short Line, the Chicago, West Pullman & Southern, the Illinois Northern, and the Pullman Railroad. (Tr. 24-25.) The traffic analysis of district movement covered the month of September, 1926, showing nearly 34,000 cars handled by 30 railroads. (Tr. 25.)

The eight railroads originally selected handled approximately two-thirds of those cars, using cars originating thereon. It was believed that a traffic study of those roads would be representative, but subsequently the study indicated that it would not be representative, because of the dropping of two-line and three-line haul cars handled by non-study railroads, and hence the adding of the seven additional roads. (Tr. 25.) An exhibit has been prepared, covering details of station clerical costs, which was offered and received in evidence as "Ex. No. 1, Witness Saur." (Tr. 26.)

The exhibit shows the fifteen roads alphabetically, with detail of the charges by primary accounts of each, on account of the operation of each of the stations on each road [fol. 474] within the switching district, with the number of consignments during the test period. The quotient is naturally the clerical cost at that station per consignments, and will be used wherever the car involved any of these station costs. It will be the particular station costs that are involved in the originating and delivering of the car.

There has been prepared an exhibit which deals with the engine-hour costs. It is "Ex. No. 2, Witness Saur." (Said exhibit offered and received in evidence.) (Tr. 27.)

In like manner this exhibit sets up by primary expense accounts the charges for the test period for the respective railroads arranged alphabetically, with net engine hours worked during the test period and costs per engine hour for each of the primary accounts. (Tr. 27.) The roads are arranged in this exhibit in the same alphabetical order as in Ex. No. 1.

There has been prepared an exhibit showing costs per car day for freight train car repairs, etc. It is "Ex. No. 3, Witness Saur." (Said exhibit offered and received in evidence.) (Tr. 28.) This exhibit is a composite statement prepared under the formula specifications as to primary accounts involved in calculating costs per day for car detention, which includes only nine trunk line roads involved in the study, as switching roads own very little equipment.

The committee concluded that the fair rate to develop for this purpose would be the composite rate shown in said exhibit, with the understanding that each trunk line would use its individual cost for its single-line haul movements, but for two-line, three-line and all movements of other railroads the composite figure of 64 cents per day would be used. (Tr. 28-29.)

[fol. 475] There has been prepared an exhibit that deals with the summary of output per engine hour. It is "Ex. No. 4, Witness Saur." (Said exhibit offered and received in evidence.) Tr. 29.) The formula provides for the separation of switching service between 12 different elements, the names of which fairly indicate the service which they cover.

Ex. No. 4 is arranged as to roads in alphabetical order, showing result of all the service in connection with each one of the elements of service involved. There is an omission between 5 and 10 of services because, though productive services, they are non-revenue services, such as switching to coal docks, repair tracks, occasional service performed for maintenance of way department, and incidental passenger switching. (Tr. 29-30.)

To undertake to state those four services in terms of cost per car would mean absolutely nothing. But such services are enumerated and the average number of cars handled per hour, with the cost per engine hour taken from Ex. No. 2, and the cost per car, has been developed for each of these general elements of service. (Tr. 30.)

The formula upon which we worked is "Ex. No. 5, Witness Saur." (Said exhibit offered and received in evidence.) (Tr. 30.)

Cross-examination by Mr. Tholin, representing Illinois Commerce Commission:

In applying or using the figures in Ex. No. 4 we show, in Ex. No. 2, how the engine-hour costs were built up. Under the specifications of the formula a report was received from each conductor that worked each day during [fol. 476] the test period, in which he separated the time and the cars involved as to his service during his tour of duty, in each of these different elements of service. (Tr. 31.) At the close of the test period these conductor reports were summarized as to the 12 different elements, so that

the first figure that will always appear there for the classification for the road in question will mean that the figure shown in the average number of cars handled per engine hour, cost per net engine hour and the cost per car, and the average cost per car for that element of switching service, and the same all through all of the different elements of service indicated. (Tr. 32.)

The application of those figures will be that for each car that moved over one or more of the study roads during the month of September, 1926, the exact units of service that were furnished will be segregated; that costs for each car or for each group of cars that received the same units of service will be worked into an exact unit, so that the final result will show for the roads as a whole the average cost for one-line hauls, two-line hauls and three-line hauls, further segregated as between the 69 I. C. C. commodities and the total. (Tr. 32.) Element No. 1 shown in Ex. No. 4 as to the B. & O. C. T. Railroad Company, classification of which shows a cost per car of 51.8 cents, will not be applied as the classification cost to every classification movement of a car handled on the B. & O. C. T. We will apply the individual classification cost that it is proper to apply. This figure is merely the average of all of the classification costs on that railroad. (Tr. 33.) We will apply the classification costs in a particular yard that it is proper to apply to the particular car or group of cars that were studied. The averages shown in Ex. No. 4 will [fol. 477] not be used at all in the compilation of the other exhibits. They will be based upon the detailed figures that are behind these averages. (Tr. 33.)

Redirect examination by Mr. Davis, for respondent railroads:

The Saur-Coverston formula referred to by the Interstate Commerce Commission in its order dated July 19, 1927, is the same as the formula introduced as Ex. No. 5. (Tr. 33.)

The respondents having no further witnesses to offer at said hearing, the hearing was postponed until a further assignment thereof by the Commission. (Tr. 33-35.)

At a further hearing on said consolidated proceedings held at Chicago, Illinois, May 15, 1928, E. F. Saur was

recalled in behalf of the respondent railroads.

(Before interrogating the witness Mr. Davis, representing the respondents, offered the following exhibits:—

Ex. No. 6, a map of the Chicago switching district, showing in red the rail lines subject to cost study; Ex. No. 2-A, being an amendment to details of engine-hour costs, C. B. & Q. Railway, pages 8 and 9; and Exs. Nos. 7 and 8. All of said exhibits were received in evidence. (Tr. 51-52.) (Abstractor.))

I testified in this proceeding on January 11, 1928, and at that hearing filed five exhibits. Exhibits Nos. 7 and 8 show the result of my cost studies, the first within the Chicago district and the other from Chicago Heights to Chicago district. These exhibits are offered as of this date because the original order of the Interstate Commerce Commission of October 25, 1926, in Dockets I. & S. Nos. 2780, 2658 and 2713, called for traffic analysis indicating the longest, the shortest, and average haul of iron and steel articles in the Chicago district, separated between one-, two- and three-line hauls, showing tonnage, ton miles [fol. 478] and revenue. This information was furnished in Exs. 1 and 2 introduced in the hearing held February 11, 1927. (Tr. 52-53.)

Said exhibits covered all the information required by the Commission and reflected the same information as to all commodities in a similar manner to that required by the Commission's order for iron and steel articles; and the Commission supplemented its order by a request that similar data be shown for all other carload commodities. (Tr. 53.) By an order issued by the Commission, dated May 25, 1927, in Dockets No. 19610 and I. & S. 2900, it required cost study to be made of the switching business within the Chicago district and between Chicago and Chicago Heights districts. It also required a resubmission of Exhibits 1 and 2 offered in No. 2780 and related dockets, which analyzed all other commodity groups between the Commission's 69 commodity classifications. (Tr. 53-54.) The Chicago & North Western, the Chicago, Milwaukee, St. Paul & Pacific, the Chicago, Burlington & Quincy, and the Pennsylvania trunk line roads, and the Belt Railway, the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt, and the Elgin, Joliet & Eastern, as switching roads, were

selected under the orders of May 25 and July 19, 1927. (Tr. 54.)

The second Commission order, dated July 19, 1927, indicated, in accordance with the carriers' desires, that the test week should be from August 4 to August 10, 1927, for the railroads previously named, using the Saur-Coverston formula. Subsequently the Illinois Central Railroad and the Chicago, Rock Island & Pacific Railway were included for one-, two- and three-line hauls, and the Chicago Short Line, Chicago & Illinois Western, the Chicago, West Pull-
[fol. 479] man & Southern, the Illinois Northern, and the Pullman Railroad for two- and three-line hauls. This necessitated a second test period, which was conducted in October, 1927. (Tr. 54.)

The periods of study, namely, one week on each railroad, were made during that part of the year 1927 between June and October, the exact periods being shown in Ex. No. 7, page 1. (Tr. 55.) During the test period these roads handled an aggregate of 63,586 cars per day, while for the calendar year 1927 they handled an average of 62,460 cars per day, a difference of about 2 per cent. It would be hardly possible to select three different study periods on 15 railroads that would reflect so nearly a normal or average showing. To the traffic moved during September, 1926, shown in Exs. Nos. 1 and 2, Docket I. & S. 2780, et al., for the 15 railroads concerned in this study, we applied the costs developed in accordance with the formula based on the test period of 1927. The formula used in the switching cost study is Ex. No. 5. On page 9 is the fundamental principle of the formula, following the list of 12 general elements of service, all subject to further division into sub-elements, reading as follows: "To ascertain the cost of a given kind of switching service in any terminal it is necessary first to determine the average cost per car for each of the foregoing elements of service, and second to know what different elements of service are given to the cars under review." (Tr. 55-56.) Eleven hundred eighteen conductors out of about 2,000 switching crews working per day in the Chicago switching district reported for a seven-day period, and the total number of units of cost so developed were 4710, of which 2332 were used to develop 6510 different combinations of units designated as index num-
[fol. 480] bers. (Tr. 56.) Ex. No. 7 shows the final re-

sults. The unit costs were applied to 11,959 single-line haul cars, 11,492 two-line hauls, and 2,735 three-line hauls, total 26,186 cars.

There are four general divisions of costs, towit, platform, clerical switching and car detention. The Chicago study covers carload freight only, hence no computations were made as to platform costs. Account 373—Station Employes—includes platform and clerical expense, and it was necessary, in determining the clerical costs, to separate Account 373 between platform and clerical expense on the basis of cost of each class of service. (Tr. 56.) A blank form shown on page 43 of the formula provides for each employe to actually record a separation of his services during the one-week study period, and on page 45 of the formula is a blank for a recapitulation of this data, or for the separation of the expense as between platform and clerical, where the payrolls themselves make the necessary separation. The specifications as to specific accounts and their apportionment are shown on page 7, and on page 59 is the form used to bring together the correct proportion of each of the selected accounts for each station involved in the study. (Tr. 57.)

The detailed results in applying these specifications at each station in the Chicago district on each of the 15 study railroads are shown in Ex. No. 1. The average of all of the 98 stations shown in this exhibit is 46.76 cents per consignment. (Tr. 57.) The second factor of switching cost, and instructions regarding it, are on page 9 of the formula. Pages 11, 13, 15 and 17 of the formula detail the specifications for the specific accounts included in engine-hour cost, with the bases of apportionment. The recorded facts [fol. 481] for each engine-hour cost were tabulated on the blanks shown on pages 61 and 63. (Tr. 57-58.) Sixty-seven disbursement accounts are prescribed in the formula, but in the cost study the three belt lines and five industrial roads in Chicago were performing exclusively, or substantially exclusively, carload switching service, and there was an opportunity to develop a 100 per cent engine-hour cost by inclusion of all disbursement accounts affecting engine-hour costs. (Tr. 58.) Comparing these costs with those developed on the same railroads on the formula basis, it appears that on the Belt Railway, the Baltimore & Ohio Chicago Terminal, and the Indiana Harbor Belt the for-

mula basis produced 90.8 per cent of the total cost, and on the five industrial roads the formula produced 91.2 per cent. A combination of the result of the eight roads produced 90.8 per cent. (Tr. 58.).

The results obtained by the formula on the seven trunk line roads were expended by this percentage figure and the results of all of these are reflected in Ex. No. 7. The Chicago, Burlington & Quincy, the Chicago, Milwaukee, St. Paul & Pacific, and the Illinois Central each developed two engine-hour costs, and the Indiana Harbor Belt and the Pennsylvania three. The average of the 22 engine-hour costs on the 15 roads is $14.55 per hour. (Tr. 58-59.)

On page 19 of the formula are the specifications for developing cost per car per day for detention. The basic data and the methods for developing average cost per day on 9 trunk line railroads, and the totals, are shown in Ex. No. 3. (Tr. 59.)

Seven of the 9 railroads are study roads. The Baltimore & Ohio and the New York Central were included because of their respective relationships to the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt. The [fol. 482] three belt lines and the five industrial roads have practically no freight train car equipment and have no facilities for making heavy repairs, and these eight roads make only minimum repairs on cars handled in the switching service. (Tr. 59.) It would be manifestly unfair to use formula specifications to develop the per-day cost for car detention on these eight railroads. Hence, on single-line hauls on the seven trunk lines, the per-day car detention cost on those lines was applied, and for all other cars the average of .64352 (Ex. 3) was used. (Tr. 59-60.) Form 6-A, developed for use in the Chicago study, is an elaboration of Form 6 shown on page 51 of the formula. From the traffic test records of cars moved in September, 1926, the necessary information was abstracted covering 26,186 cars, as shown in Ex. 7, giving the date and hour at which each car was assigned and its release for other service. Form 6-A provided for a reference to designated index number. This is merely grouping together the different units of service performed by each railroad in handling a car between each two industries involved, including proper number of empty movements prior or subsequent to the load. (Tr. 60.)

The locomotive performance for the test period and the cars handled by each in the 12 classes of service were reduced to an average number of cars per hour for each element of service covered in the 12 classes of service. To these elements, as represented by average cars per hour, were applied the respective engine-hour costs, developing the cost of each element. The combination of these costs was then made in accordance with the index number, grouping all elements, thus producing the cost of each index number. (Tr. 60-61.) For single-line hauls the index number [fol. 483] covers all elements furnished, but for two- and three-line hauls the index number of each railroad shows the total cost of the part of the movements that each performed between any two industries in the Chicago district. This made it possible to show for each of the 26,186 cars grouped by commodities the exact units of switching service furnished. (Tr. 61.) The proper clerical costs were likewise charged to each index number, one-line hauls having an originating and terminating clerical cost on one railroad. Two- and three-line hauls had an originating or terminating cost for each originating or terminating railroad. Intermediate railroads did not charge clerical costs excepting where cars were rebilled by the intermediate carrier.

Car detention time was developed by commodity groups from Form 6-A for one-line, two-line and three-line hauls, and to the total was applied the car detention rate as developed in Ex. 3. Through the various steps described we have obtained the total cost by commodity groups for one-, two- and three-line hauls as reflected in Exs. 7 and 8. These two exhibits, the latter embracing the Chicago Heights-Chicago movement—the preparation thereof having been made in the same manner as the Chicago district movements reflected in Ex. 7—show the various average costs per car and per 100 pounds. (Tr. 61-62.) Ex. 7 contains final results for one-line, two-line and three-line hauls. Ex. 8 is shown as two-line, three-line and four-line hauls, because in Chicago Heights there is a railroad known as the Chicago Heights Terminal Transfer Railroad. It performs practically all of the industrial service, for which it is paid $6.00. No cost study was made on that railroad, but in developing the cost indicated in the exhibit, that $6.00 cost was added. It appeared to be more in harmony to call

[fol. 484] the service two-, three- and four-line hauls rather than to call it one-, two- and three-line hauls plus the service of this switching road. (Tr. 63.) In Ex. 7 the one-line cost, in cents per 100 pounds, is shown as 1.9 cents. The two-line cost is 2.31 cents and the three-line haul is 2.58 cents.

In Ex. 8 the cost in cents per 100 pounds for two-line haul is shown as 2.59 cents; three-line as 3.09 cents, and four-line as 2.85 cents. (Tr. 63.) These costs are understated:

First: Because no allowance for increased costs of winter operation. Checking the operating results indicates 14 per cent less cars were handled per engine-hour and 13 per cent more locomotive fuel was used per month during December, January and February than during the other nine months of the years 1925, 1926 and 1927. (Tr. 63-64.) At Potomac Yard, near Washington, D. C., average engine-hour cost for 1926 was $13.72; for the month of August, 1926, was $12.99, as developed by the same formula used in the Chicago study; indicating that winter cost spread over the entire year increases summer cost 5.62 per cent. (Tr. 64.) I know from my own knowledge and experience that the operating conditions in Potomac Yard are much more favorable during the winter months than in Chicago.

Second: Upward trend of railroad operation costs. The cost figures include 1927 wages for certain classes of employes. Other increases granted and pending are not reflected in the 1926 costs which were otherwise used.

Third: No allowance for cost of transporting locomotive fuel on trunk lines. The trunk lines covered by the Chicago study get their locomotive fuel from their own mines. The Commission's classification of disbursement accounts [fol. 485] makes no provision for adding the cost of transporting company coal over their own lines. (Tr. 64.) These figures were not available to our committee. It inevitably follows that if these figures had been available, our cost figures would have been increased. The belt lines have assigned no cost for distributing coal to their various coaling stations. (Tr. 65.)

Fourth: Operating ratio. The order of the Commission states that the costs to be shown are to be those rep-

resentative of service in the Chicago district. Applying to these cost figures the operating ratio suggested in the formula in Ex. No. 5, 66.67 per cent, will produce the following rates in cents per 100 pounds: One-line haul, 2.85 cents; two-line haul, 3.46 cents; three-line haul, 3.87 cents. The operating ratio of 66.67 per cent suggested by the formula was used because that ratio received the approval of the Commission in certain cases, and particularly that in I. and S. Docket 965. We believe, however, that this ratio is too high to give the carriers a proper return. (Tr. 65.) From data on file with the Commission it appears that the railroad revenue dollar received in 1926 was expended in the following manner: For labor, 43 cents; locomotive fuel, 6.3 cents; material and supplies, 18.7 cents; loss and damage, personal injury, insurance; depreciation on returns, 5.2 cents; taxes 6.1 cents; joint facility rents, 1.7 cents. (Tr. 66.) This would leave 19 cents to pay interest on investment and dividends. This would have made a return to the railroads as a whole for 1927 of 4,4 per cent. A rate of return of 5.75 per cent is allowed by the Commission. To earn this percentage, and applying the same to these figures, would make an operating ratio for all the railroads of 67.4 per cent, approximating the ratio suggested in the formula. (Tr. 66.)

[fol. 486] On much greater investment per mile of road within the terminal limits, the proper operating ratio applicable to terminal operations must be materially less. (Tr. 66.) The average tax valuation per mile of road for the trunk lines included in the cost study in Cook County is five times the tax value per mile of road outside Cook County in the State of Illinois, and on a side-track basis only is ten times greater. (Tr. 67.) As a result of these studies, it would appear that the rates proposed have been justified and in fact could be higher. For example, we have shown that the costs have been understated to the extent of at least 10 per cent due to the fact that the cost studies included only summer operation and do not reflect the higher costs which are inevitable during the winter months. Furthermore, the cost study does not take into account the cost of transporting company fuel over the trunk lines because the Commission's accounting rules do not provide for the separation of these costs. It is also a fact that the trend in railroad operating costs is continu-

aly upward. Furthermore, we have shown that the operating ration of 66.67 if applied to the ascertained costs would not produce a rate which would give the carriers a fair return for these terminal services. During the field-work representatives of the Commission and of Mr. Oliver were present observing conditions, methods, etc., employed by the carriers. The details of this study have been available and have been used by Mr. Oliver in analyzing and selecting data for use in this case by the shippers. (Tr. 68.)

Cross-examination by Mr. Walter, representing shippers:

The engine-hour cost, $14.55, I took from Ex. 2 and simply used the figures shown there, and it includes whatever may be added by reason of the 90.8 ratio shown on page 5 to the extent that the belt line roads which did make 100 per cent costs have shown that to be their engine-hour cost; and to the extent that the trunk line roads did not add it in Ex. No. 2 the 90.8 per cent ratio adds nothing to such engine-hour cost. (Tr. 69.) I would not be able to say what that figure should be to give effect to the less than 100 per cent ratio on certain of the roads. I merely set that figure up to arrive at something like an average of the results as indicated by Ex. 2. (Tr. 69.)

[fol. 487] By Mr. Cardy:

The two-line costs from Chicago Heights of 2.59 cents per 100 pounds includes the tariff rate of the Chicago Heights Terminal Transfer Railroad Company. (Tr. 69.) It was included as an item of expense, no cost study having been made on that railroad. To determine a one-line movement I would deduct that $6.00. Applying the 67.4 per cent operating ratio in figuring ultimate cost, I applied that to the $6.00. It was applied to the entire cost shown. (Tr. 70.)

By Mr. Keene:

The freight charges that the belt line roads pay for company fuel are included in the cost of locomotive fuel, but there is no cost in the figures for the distribution by those roads of their own company fuel over their own railroads. (Tr. 70.) That would be relatively small as compared with

the cost to the trunk lines of transporting their company fuel. (Tr. 71.)

In stating that operating costs are on the increase I did not have in mind operating costs per unit of service. What I had in mind was the costs themselves. (Tr. 71.)

(Mr. Davis, representing respondent railroads, offered the exhibit numbered No. 1 in I. and S. Docket 2780 as Ex. No. 9 in this proceeding, and the exhibit numbered No. 2 in said I. and S. Docket 2780 as Ex. No. 10 in this proceeding, and a bound exhibit was offered as Ex. No. 11, to be presented as a part of the testimony of the witness G. F. Vivian. Said exhibits were then marked as "Exs. Nos. 9, 10 and 11, Witness Vivian," respectively, and received in evidence. (Tr. 76.) (Abstractor.)).

G. F. VIVIAN was sworn and testified as follows:

[fol. 488] Direct examination by Mr. Davis, representing respondent railroads:

My name is G. F. Vivian, and I am a statistician of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company. (Tr. 76.) I have been a member of the cost study committee that has been working with Mr. Saur from its inception. I prepared the exhibit which has been marked Ex. No. 11. In the hearing on February 11, 1927, in Docket I. and S. 2780 and related cases, Mr. Galligan introduced exhibits Nos. 1 and 2, which in this case have been numbered 9 and 10. These exhibits show iron and steel articles, other commodities, and total divided as to one-, two- and three-line hauls, with a further analysis on pages 4, 5, 6, 7 and 8 of details by railroads shown in Ex. 9. Compliance with the Commission's notice of May 25, 1927, required the re-analysis of the information contained in exhibits Nos. 9 and 10 for all the other commodity groups, and the results of that re-analysis are shown in Ex. No. 11, together with the first portion of Exs. Nos. 9 and 10 dealing with iron and steel articles. The re-analysis separates the information in Exs. Nos. 9 and 10 among the Commission's 69 commodity groups. (Tr. 77.) These exhibits show the average haul of all commodities on one-, two- and three-line hauls. The average haul for one line is 11.3 miles; for

two lines, 22.10 miles; and for three lines 26.4 miles. The average loading for one-line hauls is 40.5 tons; for two-line, 39.9 tons; and for three-line 42 tons. The average revenue per ton for one-line is approximately 43 cents; for two-line, 53 cents; and for three-line, 69 cents. We have included in this re-analysis of all other commodities the traffic moved in switching service by the Elgin, Joliet & Eastern Railway. (Tr. 78.)

[fol. 489] Cross-examination by Mr. Walter, representing shippers:

The average haul stated by me was for the ton and not on the car. The average haul per car is slightly less than in the case of one-line, two-line and three-line hauls. The figures include movements from the Elgin, Joliet & Eastern, but only on its switching business, not road-haul business, such as from Gary, Joliet and Waukegan. I could not differentiate between the switching business and the road-haul business of the Elgin, Joliet & Eastern. That road would have to do that. We asked them for the switching business involved in the territory which was under agreement. Roughly I believe the territory included movements between Gary and the Chicago switching district, between Chicago Heights and Gary, and between Chicago Heights and the Chicago switching district. (Tr. 79.) It would include a local movement on that road in Gary and in Chicago Heights if they had any such movement. It would include movements on the Chicago Heights Terminal now operated by the Chicago & Eastern Illinois. The switching figures of the E. J. & E. do not include any traffic in Waukegan or from Waukegan. If you take the total number of cars shown on these pages for the respective one-, two- and three-line hauls, and compare that number with the total number of cars shown in the cost study, you will get the percentage relation to the total. No cars in my Ex. No. 11 were moved in switching service as a part of the line-haul movement, and no line-haul cars were included in the cost study. (Tr. 80.)

By Mr. Tholin, of the Illinois Commerce Commission:

The Elgin, Joliet & Eastern cars were distributed by com-
[fol. 490] modities in this statement.

Redirect examination by Mr. Davis, representing respondent railroads:

Cars moving between Chicago Heights and Chicago are included.

Recross-examination by Mr. Tholin, of the Illinois Commerce Commission:

I could not say that the figures as to Elgin, Joliet & Eastern switching includes intra-plant switching within the Illinois Steel Company in Gary, because I believe that business was kept separate and not reported under the local to Gary or local Gary, being, as I understand it, from one industry to another. (Tr. 81-82.)

J. B. Hamilton was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I have had twenty-one years of railroad experience with the Illinois Central Railroad; and am now a train master. (Trans. 82-83.) I have had experience in train operation during winter months as compared with summer months, and there is considerable difference in the winter months' operation. Winter weather conditions require more power for handling the same business than in the summer. It is not possible to handle as many cars per engine hour in the winter or the severe months as in the summer. Oil and grease in the journal boxes become stiff; cars will not roll [fol. 491] as well in severe weather, which requires reduction in the number of cars per train; it is more difficult to start trains because of the additional adhesion. (Tr. 83.) Trains must be shoved out of the yard to get them started or warmed up. In transfer work or road-haul movement cars standing during severe weather get stiff and are harder to start. (Tr. 84.)

In yard operation, particularly in a hump operation, cars must be pulled back and run up and down the track to get warm so they will move over the incline. This movement is not required in summer. (Tr. 84.)

In snow storms it is particularly difficult. Operations are retarded; switches become clogged with snow, which requires the use of engines at different times, forcing steam between the switches to thaw them out. (Tr. 84.)

Snow storms or sleet storms slow down the passing of signals; smoke and steam from the engines hang a great deal lower in subzero weather. The human element is also involved. The men are looking for a warm place as much as they can, and trying to get it. (Tr. 84.)

The conditions described I have experienced in Chicago every winter. (Tr. 85.)

Cross-examination by Mr. Walter, representing shippers:

I do not know the average mean temperature in January in Chicago for any particular year. It has been considerably below zero during every winter that I have been here. (Tr. 85.) I do not want to make it appear that Chicago has a zero temperature all during the month of January, but I would like to make it appear that it is a pretty cold place. [fol. 492] It is also hot in the summer time. The men do not move faster in cold weather than they do in the summer time. They move a little faster toward a stove. They are either moving faster to get the work through quicker, or let the time go by for their eight hours. Wind furnishes considerable trouble in the handling of freight. (Tr. 86.) Wind pressure is an element in handling freight in a hump yard. Wind blows both winter and summer, and there is a certain amount of retardation in the wind, naturally, against a car. The hump is raised somewhat in the winter, about 12 inches, to give a greater incline. I cannot say that it is not the fact that the volume of cars handled—that is, the lading—varies with the seasons, and that it affects unit cost of handling more than the weather conditions referred to by me, nor can I say that it is. (Tr. 87.)

By Mr. Cardy:

Our peak month of traffic is in October. From then on it drops off until March, which is a rather heavy month. A very large volume of coal moves during the winter months through the Chicago District. (Tr. 88.)

G. J. SHREVE was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am general superintendent of the Belt Railway Company of Chicago, and have had thirty-three years of operating experience with that company. (Tr. 89.) My testimony would be practically the same regarding winter operations as compared with summer, as that given by Mr. Hamilton; [fol. 493] but I would also say that the locomotives are not as efficient in cold weather as they are in the summer time, in starting trains, due to the cylinder walls being cold causes steam to condense more rapidly than it does in the summer time. With this addition I adopt the testimony given by the witness Hamilton. (Tr. 89.)

Anticipating these winter conditions we get our tracks in a high state of maintenance before the weather takes the turn. We begin the work the latter part of October and continue into November. (Tr. 90.)

R. A. BARLOW was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am train master of the Baltimore & Ohio Chicago Terminal Railway Company; have had thirty-five years' operating experience with that railroad, twenty-six years in the Chicago district. (Tr. 91.) I heard the testimony of Mr. Hamilton and Mr. Shreve, witnesses who preceded me. I adopt their testimony as my own, except add that the snow and sleet interfere terribly with our interlocking plants. It is difficult to keep them open and the trains and engines moving. (Tr. 92.)

A. R. PELNAR was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am assistant to the general manager of the Chicago [fol. 494] & Northwestern Railway. Have had thirty years'

operating experience in winter and summer months. I heard the testimony of Mr. Hamilton, Mr. Shreve and Mr. Barlow, who preceded me, and have nothing to add to their testimony regarding comparison of operations between winter and summer months, and adopt their testimony as my own. (Tr. 93.)

Cross-examination by Mr. Walter, representing shippers:

We know what weather does, and we prepare to meet it. (Tr. 93.)

C. W. GALLIGAN was sworn and testified as follows:

Direct examination by Mr. Davis, representing respondent railroads:

I am chairman of the Illinois Freight Association. I have prepared a statement outlining the issues in this case covering the switching rates in the Chicago district. The matter involved in this proceeding grew out of the Commission's decision in docket I. C. C. 15110, Jones & Laughlin Steel Corporation v. Baltimore & Ohio Railroad, 96 I. C. C. 682. In that case the Commission found that rates on iron and steel articles from the Pittsburgh group to destination points included in the central and southern portion of Illinois were unreasonable to the extent that they exceeded rates, in cents per hundred pounds, set forth in the mileage table of rates incorporated in the Commission's decision, which distance rates were found to be just and reasonable maximum rates for the future. (Tr. 95.) Following the decision in that case the carriers held conferences among [fol. 495] themselves and jointly with shippers and receivers of iron and steel articles, and worked out an adjustment for Illinois territory which carriers and shippers believed in harmony with the Commission's decision. (Tr. 96.) Agent Galligan's Tariff I. C. C. No. 65 reflected that adjustment and was filed with the Commission to become effective April 25, 1926.

On April 24, 1926, the Commission suspended, by order in I. and S. Docket 2658, said tariff I. C. C. 65 and various tariffs and supplements issued by individual lines. On the same date the Commission advised Agent Galligan that the rates in his tariff were suspended because the interstate

carriers at the same time failed to re-align their rates on iron and steel articles within the Chicago switching district, and because certain of the interstate carriers failed to revise rates from Gary, Indiana, to points within the Chicago switching district to conform to the basis prescribed in the Jones & Laughlin case. The Commission requested that the suspension proceedings be held in abeyance to give carriers an opportunity to promptly re-align the rates in effect on iron and steel articles within the Chicago district and from Gary to the Chicago district to the basis in harmony with the rates proposed for similar distances from points outside the district other than Gary, Indiana; that the Commission felt undue prejudice against points outside the district such as Chicago Heights, shipping into the district, would result from the revision proposed from such outside points, by leaving a rate of two and one-half cents per hundred pounds between all points in the congested Chicago switching district, and rates of three and five cents respectively for single and joint-line hauls from Gary to points in the district. The communication from the Com-
[fol. 496] mission referred to is "Ex. No. 12, Witness Galligan." (Said exhibit offered and received in evidence.) (Tr. 97-98.)

Similar suspensions were made by the Public Service Commission of Indiana and the Illinois Commerce Commission.

Pursuant to the Commission's suggestion the interested Illinois carriers conferred regarding a revision of the rates in Galligan's Tariff I. C. C. No. 65 and suggested rates for applications within the Chicago switching district of 6 cents per hundred pounds, minimum 60,000 pounds; 8 cents per hundred pounds, minimum 36,000 pounds. It was further thought that rates of individual lines operating in the Chicago district would be revised to provide rates on articles of iron and steel listed in Agent Galligan's Tariff I. C. C. 65 to conform with changes to be made in Chicago switching committee tariffs. And after that conference a further one was held with Commissioner Campbell, members of the suspension board and Mr. Hardie and interested Illinois shippers. At the conference Illinois shippers urged that the Commission vacate its suspension order of April 24, 1926, I. and S. Docket 2658, allowing rates published for application in Illinois terrritory to become effective. (Tr.

98-99.) Thereafter the Commission vacated its order of April 24, 1926, which permitted the tariffs of individual lines and all portions of Agent Galligan's Tariff I. C. C. 65 to become effective except as to rates between Chicago Heights and Gary on the one hand, and the Chicago District on the other. The rates permitted to become effective were for application in Illinois territory and to become effective May 29, 1926. (Tr. 98-99.) The rates between Chicago Heights and Gary, on the one hand, and the Chicago district on the other, remained under suspension. (Tr. 100.)

[fol. 497] The Commission further suggested that carriers and shippers interested in the matter should take up for consideration the rates on iron and steel articles covered by said tariffs between Chicago Heights and points within the Chicago switching district, between points wholly within the Chicago switching district and between Gary, Indiana, and points within the Chicago switching district (Tr. 100), and undertake to harmonize them in fair relationship with rates from other points into the Chicago switching district, under the general principles announced in the decision of the Jones & Laughlin case. Numerous conferences were had relating to this matter.

On August 13, 1926, the Commission assigned for hearing on September 9, 1926, at the Great Northern Hotel, Chicago, I. and S. Dockets 2658 and 2713 (iron and steel articles from Brazil and Terre Haute, Indiana, to Chicago), also Docket No. 18402, W. J. Holiday Company v. Elgin, Joliet and Eastern Railroad, et al. (Tr. 101.)

The carriers and shippers, being unable to reach an agreement as to rates on iron and steel articles applying between Chicago Heights and the Chicago district, and within the Chicago switching district, and from Gary, Indiana, to the Chicago switching district, the carriers decided to file a tariff carrying rates on iron and steel articles listed in Agent Galligan's Tariff I. C. C. No. 65 for application in the Chicago switching district, 3 cents per hundred for a one-line haul, 5½ cents for two-line hauls, 6½ cents for three-line hauls, minimum 60,000 pounds. These rates were published and filed in Supplement No. 9 in Agent Galligan's Tariff I. C. C. No. 63, Illinois Commission No. 21, and Public Service Commission of Indiana No. R. C. 8. (Tr. 102.)

The Interstate Commerce Commission, as well as the [fol. 498] Illinois and Indiana Commissions, suspended the rates in Supplement No. 9 to I. C. C. No. 63, and matters involved therein were assigned for a hearing November 9th, 1926 at the Great Northern Hotel, Chicago, before Examiner Faul.

By order dated October 25, 1926, in I. and S. Dockets 2658 and 2780 the Commission required the carriers to furnish statistical data as to the shortest and longest and average haul on iron and steel articles in the Chicago district; also data as to the cost of moving iron and steel articles within the Chicago district covering the average one-line, two-line, and three- or more line hauls, also the general average haul. (Tr. 103.) The furnishing of this information caused the cancellation of the hearing set for November 9, 1926, and later the carriers were requested to make the statistical data required in the order of October 25, 1926, apply to all commodities instead of iron and steel alone as first called for (Tr. 104), which the carriers agreed to.

It was not believed that a cost study made during the winter months, due to adverse operating conditions, would fairly reflect a representative unit cost and would, therefore, not be indicative of normal conditions. On January 15, 1927, the Commission assigned for hearing in Chicago on February 16, 1927, the matters involved in I. and S. Dockets 2658, 2713 and 2780. Following the assignment of these cases conferences were arranged between representatives of carriers and shippers, as a result of which the interested parties reconciled their differences in regard to the rates, and they requested of the Commission a postponement of the hearing set for February 16, 1927. (Tr. 105.) But the Commission suggested that any compromise or proposed changes in rates should be presented [fol. 499] at the Chicago hearing February 16, 1927, as scheduled. (Tr. 106.)

On February 12, 1927, I filed application for permission to withdraw and cancel rates applicable on iron and steel articles within the Chicago district covered in Agent Galligan's Supplement No. 9 to I. C. C. No. 63, as well as rates published in individual lines, tariffs for single-line hauls in the district, and revised rates published for application on iron and steel articles between Chicago Heights and points within the Chicago district, and to publish in lieu

thereof the basis of rates agreed upon between carriers and shippers, to-wit: for single-line hauls, 3 cents; for two-line hauls, 3½ cents; for three or more line hauls, 4 cents per hundred pounds, minimum weight 60,000 pounds. (Tr. 106.) The Commission granted the authority to publish the suggested rates on short notice, effective April 30, 1927 (Tr. 107), but on April 29, 1927, the Commission, in I. and S. Docket 2900, suspended said rates until the 30th of November, 1927. They are now under suspension to August 30, 1928, and are the rates which are involved in this proceeding. (Tr. 107.)

May 25, 1927, in I. C. C. Docket 19610 and I. and S. Docket 2900, the Commission by order required carriers to submit, at a hearing to be held in Chicago in November, 1927, a statement or statements showing the cost of switching carload traffic within the Chicago switching district, and that in so doing the carriers might select yards of a limited number of carriers, which would be representative of the district as a whole (Tr. 107-108); that the statistical data submitted in response to notice of October 25, 1926, in connection with I. and S. Docket 2680 be resubmitted [fol. 500] and the data relating to the traffic test of September, 1926, be further analyzed to show the number of cars, load, average haul, revenue per car and per ton, not only for iron and steel but for such of the other 69 carload classes used in regular commodity statistics. (Tr. 108.) This order of the Commission has been complied with and exhibits have been prepared and filed with it in these proceedings and with the state commissions involved.

Cross-examination by Mr. Slater, of the Illinois Commerce Commission:

No arrangements were made for representatives of the State Commission to sit in at the conferences between shippers, carriers and the Interstate Commerce Commission. I do not recall that the Illinois Commerce Commission was represented when my application was filed to publish the rates agreed upon upon short notice with the Interstate Commerce Commission. My recollection is that the tariffs were also withdrawn from the files of the Illinois Commission and correspondingly revised rates filed with the Illinois Commission and the Indiana Commission. (Tr. 109-110.)

Cross-examination by Mr. Walter, representing shippers:

I could not say what percentage of the movement in the Chicago switching district is wholly intra-state. I do not think we have ever made any figures to show the movement in Illinois, and the interstate movement. I could not say that the intra-state movement is more than 75 per cent of the total. (Tr. 110.) From my experience I would say that the movement intra-state in the Chicago district is greater than the interstate movement. There is considerable movement intra-state in Indiana. I would not under- [fol. 501] take to state the movement in percentages without having the actual figures. There is considerable interstate movement from Indiana and also in the Illinois outside district—a very large movement. There has been no proposal on the part of the carriers to include within the Chicago district the Elgin, Joliet and Eastern Railway. (Tr. 111.) The carriers were satisfied with the original method of making rates under the Lowry agreement, but not as to the basis, because we are now trying to increase the original Lowry rate basis. (Tr. 112.) Leaving out of consideration the amount of the rate, the carriers generally are satisfied with the switching system in Chicago, the Lowry basis, so-called. (Tr. 112.) That switching arrangement has contributed materially to the development of the Chicago district and has been of very decided advantage to shippers and carriers. (Tr. 112.) There are some exceptions to the rates named in the Lowry tariff which vary from the rates under suspension; some rates published in the tariffs of individual lines for the movement of low-grade commodities, such as refuse, some raw materials, and refuse materials such as cinders, slag, etc. (Tr. 112.) I think the individual lines publishing those exceptions have proposed slight increases in the rates on those articles. There is no general exception on the part of carriers that I know of to remove those low-grade articles from their present rate adjustment, except such as may have been proposed by the individual lines, as I have heretofore stated. (Tr. 113.)

Chairman Campbell: It may be thoroughly understood that any negotiations that took place were merely for the sake of harmony, and they bind no one.

Mr. Walter: Mr. Davis, in offering the testimony that [fol. 502] you have offered, it was purely historical and not intended to prove that any agreement had been made that these rates ought to be allowed to go into effect or anything of that sort?

Mr. Davis: No, absolutely not. I simply wanted to cover the history of this rate litigation and do it historically, and Mr. Galligan probably knew it better than any of the rest of us. (Tr. 114.)

Mr. Slater: The Illinois Commission knew nothing about it and I did not want to be charged with the responsibility for the failure to advise them of these negotiations. I did not advise them because I knew nothing about them at all.

The Witness (continuing): I probably should have followed up my statement on direct where I ended, with the further statement that the cost study made by the carriers, and the exhibits filed in connection therewith, were considered by the carriers as justifying the rates that they published and filed and that are now under suspension. (Tr. 115.) I refer to the exhibits that have been offered, Mr. Saur's testimony explaining the exhibits and the result of the cost study. They are offered in support of the tariffs under suspension. (Tr. 116.) Wherever there is any proposal to change any existing switching rates or to change the territory to affect switching rates at all, it is embraced either in my testimony or in Mr. Saur's testimony or in the exhibits referred to. (Tr. 116.)

All shippers were not represented at the conferences to which I have referred. (Tr. 116.) When we got together with the shippers we undertook to compromise our differences in the district here, but no definite conclusion was reached at that time, so that the matter is still wide open as to the rates that are under suspension. There has not [fol. 503] been anything definite decided about them. (Tr. 117.) It was definitely understood that the carriers and shippers were absolutely free to take any course their judgment might indicate when the matter came up for consideration before the Commission. (Tr. 117.)

Question by Mr. Cardy:

Under the working out of the readjustment the same rates were published for application from Chicago Heights to points in the district as apply between points in the district. (Tr. 118.)

Question by Examiner Faul:

It was the understanding of the carriers that these proposed rates would be made applicable on all commodities movable within the Chicago switching district, including those that are now excepted from the Lowry basis, but not to extend to the excepted rates on so-called refuse materials or refuse commodities moving within the district by single-line hauls. (Tr. 119.) They are not involved in this proceeding, but are involved in the general investigation. (Tr. 120.)

Question by Chairman Campbell:

We are not urging that the proposed rates be applied on the low-grade commodities as we are urging them to be applied on the commodity basis in Chicago district. We expect to leave the rates on those low-grade commodities as they are. Those exceptions apply very largely on the [fol. 504] short lines here in the district. Those exceptions are on low-grade commodities such as dirt and cinders and low-grade commodities of that nature, and also on some raw materials. (Tr. 120.) In revising the Lowry tariffs where we advanced rates to the compromise basis, the rates in the individual line tariffs were brought up one-half cent or one cent where there were very low rates. Those increases were suspended at the same time. (Tr. 121.) It is my understanding that we are attempting to justify increases made in those low-grade commodity rates but not to put them up to the full basis. I mean proposed compromise basis.

The carriers do not propose any increase in their rates that are now excepted under the Lowry agreement unless they have filed them in the tariffs which have been suspended, with the exception of grain and coal, on which, I understand, they are proposing a new Lowry basis for those commodities. I will work up a statement that will show the rates on the low-grade commodities and all that are not being brought up to the full rate that will be carried in the Chicago switching committee agency tariffs. (Tr. 122.) I have stated that where rates were not under suspension it was not proposed to increase them. The statement I have agreed to furnish will show what rates are not to be increased. (Tr. 123.)

[fol. 504a] I do not mean to indicate that Chicago Heights agreed to any proposed grouping that would put them outside the Chicago switching district. (Tr. 129.)

Mr. Davis (representing respondent railroads): With the reservation of definitely answering you in regard to those other rates that we have been talking about, Mr. Chairman, we rest. (Tr. 130.)

[fol. 505] Mr. Walter: Mr. Chairman, I wired you after doing my best to get from the carriers one set each of Forms 103 and 107, and you asked me to bring it up, or suggest that I bring it up, here at the hearing. Form 107 gives the cost for each element of service and Form 103 gives the total cost for each index of the route. The objection on the part of the carriers is that this discloses information as to the business of one shipper as compared with another. The Interstate Commerce Commission has one set and the Illinois Commerce Commission has one set and we think that they should formally be offered in evidence and that we should be furnished with one copy. (Tr. 133.)

Mr. Davis: Well, of course, Mr. Walter has stated one of the objections that we have and we do not want to furnish it without being protected by your ruling or your order. The Illinois Commerce Commission served notice or an order upon us and we complied with that and gave it to them. Mr. Oliver has had use of the working sheets that covered this same information in our office but what I understand Mr. Oliver wants now and what Mr. Walter requests for him is a copy of a set so that he can have it with him constantly. If you order us to give Mr. Oliver a copy of what we furnished to the Illinois Commerce Commission and what we furnished to you, why I think we have an extra copy of it.

Mr. Walter: And make those that have been filed formally a part of the record so that they may be used for all purposes. (Tr. 134.)

Mr. Walter: I will make this statement of record, Mr. Chairman that the Association of Commerce and the Chicago Shippers Conference are composed of those who ship by large odds the greater majority of these cars, and many individual shippers also have entered their appearance and are here. (Tr. 135.)

Chairman Campbell: We will make such order, that it be introduced in evidence unless there is objection by the

shippers which is convincing to us that certain items should be withheld. (Tr. 136.)

[fol. 506] Chairman Campbell: On account of the nature of the information, we will not require the distribution of it generally. We will require sufficient copies for our Commission and the state commissions, with copies made available for those who can show their interest so that the same can be examined and used by them, but we will not require the general distribution of these exhibits. (Tr. 137-138.)

Chairman Campbell: The order will protect you. We will make every endeavor to protect you and every endeavor to protect the shippers so that this information will not be generally used. (The two documents referred to were received in evidence and marked Exhibits 90 and 91. See Transcript page 1509.)

[fol. 507] Chairman Campbell: We rest.

The hearing was adjourned, to reconvene at Chicago, Illinois, May 16, 1928 at 9:30 A. M. (Tr. 139.)

On May 16, 1928, the hearing in said proceeding was reconvened pursuant to said adjournment. (Tr. 141.)

George W. Oliver, called in behalf of the shipping interests, was sworn and testified as follows:

Direct examination by Mr. Walter, representing shippers:

I am a railroad statistician and live in Chicago, Illinois. (Tr. 141.) In the past few weeks I have engaged in a study of the switching situation as it pertains to costs here. On March 8th I received my copy of the cost exhibits filed by the carriers in this proceeding. At a meeting at Mr. Galligan's office on March 7th arrangements were made whereby I received access to the working papers of the railroads. Since March 8th I have worked continuously in a review of the railroads' work. (Tr. 142.) Due to shortness of time since getting the railroad exhibits I have had to curtail to a considerable extent my investigations in order to be pre-
[fol. 508] pared for this hearing. (Tr. 142-143.) I have not made a full analysis of the routes over which the switching district traffic moves, or an examination of the results of the cost of the various elements of service on the railroads.

(Tr. 143.) I have been able to make but a short analysis of switching costs per engine hour, and only a limited amount of time to the important question of the assignment of car repairs to switching district traffic. Mr. Saur stated the methods the railroads followed, in a general way, in which the railroad exhibits were prepared. I will state those methods and show how the cost calculations of the railroads have been thrown together arriving at the final results obtained in their Ex. No. 7.

In preparing their final cost exhibit they followed four main processes:

First: They determined the total time cars moving in September, 1926, were in switching district service. Car detention was based upon the elapsed time from the time cars are supposedly assigned to shippers for loading, to the time cars are released for unloading. Such amount of car detention in days was multiplied by an average car repair cost per day to arrive at car repairs assignable to switching district traffic. (Tr. 144.) Points between which cars were assigned and then released formed the route to which the operating representatives of each road assigned the elements of service for the purpose of calculating through switching cost per car.

Second: They made tests for the purpose of determining the cost of each separate movement made by a car, which is termed "an element of service." For example, a classification in a particular yard, or transfer from one yard to [fol. 509] another, or "spotting" a car in industry (Tr. 144), each constitute an element of service.

Third: An operating representative for each railroad then on a blank recorded the kinds of movements or elements of service that the car received in being transported between each two industries, or between each industry and an interchange point with a connecting line, inclusive of the empty haul. The cost for each element of service was then inserted and the various items totaled, arriving at the total switching cost for the through movements of the car. This cost per car was then applied to the number of cars moving over the particular route in September, 1926.

Fourth: The railroads made a test for the purpose of ascertaining the cost for clerical service per car.

The results of these four processes were assembled by the railroads and final results are contained in Ex. No. 7, consisting of three pages.

The results of processes 2 and 4, switching costs per element of service and clerical costs per car, are susceptible of check from the working papers. Process 1, the car detention, can only be checked at a tremendous expense of time, and I have only endeavored to review this work in a very limited way with the assistance of individual shippers, which I shall refer to latter. (Tr. 145.)

Process 3, the assignment of elements of service to each route, being based upon the knowledge and experience of operating representatives of the railroads, is not susceptible of check except by actually following cars which move over the various routes, ascertaining exactly what happened to these cars.

[fol. 510] A little of this work was attempted by one of the shippers, and the results of his investigations will be placed in evidence later. This process is about the most important phase of these cost studies. The exhibit I will introduce will show illustrations of various routes which will be discussed later, and which illustrate clearly the manner in which the switching costs have been assembled.

Mr. Walter: We now offer in evidence Ex. No. 13.

Mr. Davis: We object to the introduction of Ex. No. 13, particularly with reference to page 46, giving the proposed tentative valuation by the Commission. We do not think that has any proper place in this case in regard to the fixing of freight rates, as the final value has not yet been fixed. This objection is made on behalf of all the interested carriers. (Tr. 146.)

Examiner Faul: The exhibit will be received subject to your objection.

(The document marked "Ex. No. 13, Witness Oliver," was thereupon received in evidence. (Tr. 147.))

The Witness (continuing): This exhibit was prepared by me or under my direction, and I believe it to be correct. (Tr. 147.)

The processes which I refer to were applied under the provisions of the Saur-Coverston formula. I believe this formula should be modified in three respects:

First: It should provide for ascertainment of separate engine-hour costs for industry service, for weighing at industries, and for other service. (Tr. 148.) This should be done because smaller engines are usually used in industry service and the industry usually owns and maintains [fol. 511] the tracks upon which the engines operate.

Second: The cost per engine hour for maintenance of way and structures should be based upon expenses for a year, divided by the engine hours for a year, instead of taking one week's part of a year's maintenance and dividing that part by the engine hours for the week.

Third: The formula provides for the ascertainment of freight car repairs and depreciation by multiplying the number of car days assignable to the particular traffic, by the repairs and depreciation per car day for the entire line of one or more railroads. This basis is not correct, since car repairs relate not only to time but also to mileage the cars make, and certain other factors which affect repairs. The formula basis is no more proper for switching district traffic than it is for long-haul traffic.

It has a tendency to over-state car repairs for short hauls and to under-state them for long hauls. This is a problem which has been given constant study by numerous persons for a great many years, and as far as I know, an accurate basis has never been developed. (Tr. 149.)

I believe the formula should contain a provision for the ascertainment of car repairs on an alternative basis which reflects the effect of both time and mileage. I shall refer to this subject again. If modification of the formula is made to meet these criticisms I believe it will give representative and reliable results, provided it is properly and correctly applied.

My investigation convinces me that it has not been properly applied by the carriers in the investigations they have made, for the following reasons:

[fol. 512] First: Examination of the switching cost for each element of service shows wide variations, due in part to the fact that a test period of only one week was used.

Many abnormally high costs would be greatly altered if a longer period were used. (Tr. 150.)

I therefore believe that tests of this character should be made for a period of one month. This would increase the number of basic reports to be made by conductors and increase the volume of work summarizing the reports, but from that point on the volume of work involved in assembling the results under the four processes would be substantially the same for a test of one month as for a test of one week.

Second: Results of a week's test period at various times in 1927 have been applied to cars which moved in the month of September, 1926. This has resulted in distorted costs, which I shall later demonstrate. I believe that the results of a test made under the Saur-Coverston formula should be applied to cars that actually moved in the test period, rather than those which moved in some other period.

Third: I do not believe the plan adopted by the railroads in determining when cars are assigned to and released from switching district traffic is correct for the purpose of ascertaining car repairs or for the purpose of ascertaining the routes and the proportion of the movement wholly assignable to switching district traffic.

This in many cases obviously results in an over-assignment of costs and in others an under-assignment. In many instances the real responsibility for empty movements is ignored. (Tr. 151.)

[fol. 518] Payment for the use of private cars is made by the railroads in only a few instances, such as tank cars, and only then upon the basis of 1.5 cents per mile for the distance between base yards.

They pay for all repairs for which the user is responsible, but so far as I can ascertain the amount of these repairs is very small. (Tr. 151.)

On page 2 of Ex. No. 7, showing costs of two-line hauls, opposite the commodity "Refined Petroleum," $3855.00 is included for car detention costs, and for "Asphaltum," $308.24 as car detention costs. These two commodities move in tank cars. There are also other commodities which move in tank cars, such as vinegar, included in certain general commodity groups. (Tr. 151-152.) These par-

ticular charges for car detention are greatly over-stated. Excluding the car detention charge for refined petroleum from the total cost for two-line hauls, when spread over all the two-line cars moved, would cause a reduction of about 34 cents per car in average cost per car shown for two-line hauls. This is mentioned as an illustration showing the effect of this treatment of tank car repairs. (Tr. 152.) The meager information contained in the exhibits thus far introduced by the railroads is valueless for testing the reasonableness of their results or for the purpose of checking any of the processes. It is necessary to refer to the working papers back of these final costs.

To amplify the record a little in this direction I have prepared three statements, pages 1, 2 and 3 of my exhibit No. 13, showing an analysis of clerical and switching costs of railroads for one-, two- and three-line hauls. (Tr. 152.)

On page 1 of the exhibit is shown the great variance [fol. 514] in clerical costs for the different roads, ranging from 27 cents per car for the Chicago, Burlington & Quincy Railroad up to $1.24 for the Chicago, Rock Island & Pacific Railway. (Tr. 152.) I have not had time to investigate the causes of those variances. At the bottom of page 1 I have shown the percentage of switching costs contributed by the trunk line roads and by the switching roads to the total cost for all cars embraced in the study. (Tr. 153.) The switching roads contributed 80.6 per cent of the total.

Page 2 is a summary for two-line cars. Substantial variances are here shown in the clerical costs, ranging from 27 cents on the Chicago, Burlington & Quincy to 86 cents on the Baltimore & Ohio Chicago Terminal and 24 cents on the Indiana Harbor Belt. (Tr. 153.)

These clerical costs cover the originating or terminating end of the service, and should be doubled to get the through clerical cost per car.

At the bottom of the column I show average cost per car for clerical costs, the average per car originated, 87 cents, is for the through movement. At the bottom of the sheet it is shown that 59 per cent of the total switching cost is contributed by the switching roads to these two-line hauls. The average cost per car shown under switching costs for the various roads is each road's cost for its part of the haul, the total through cost for all cars being

$13.23 for switching service only. I did not put on that sheet the total of clerical and switching cost because it does not include car repairs. The way the carriers threw their car detention costs together, they really could not be segregated by roads in order to have them compare properly with these figures. (Tr. 154.) The car detention figures [fol. 515] were assembled by the originating railroads. These figures comprise the clerical cost and the switching cost for each railroad on the business which it originated and on that which it terminates. This figure of $13.33 for average switching cost is the weighted average cost.

Page 3 shows similar information for three-line hauls. The Belt Railway shows no clerical cost for its business, which was all intermediate. It did not participate as an originating or terminating carrier in any three-line hauls. The railroads, in arriving at their average clerical cost, did not count the intermediate consignments. It is not proper to include a charge for intermediate clerical service. It is all embodied in their other cost on one- and two-line hauls. Some roads handled the matter of their clerical cost in a different way. Some counted the handlings on intermediate cars. On three-line hauls 51 per cent of the switching costs are contributed by switching roads.

Page 4 of my exhibit is a comparative statement of engine-hour costs of railroads, as taken from Ex. 2 in this case. The engine-hour costs so shown differ widely on the different railroads.

Costs for track maintenance range from 37 cents per engine hour on the Chicago, Burlington & Quincy, to $6.85 on the Chicago & Illinois Western, and up to $11.00 for the Gibson Hump on the Indiana Harbor Belt. (Tr. 155.)

The exhibit discloses wide variations in other items. Referring to Account 382—Fuel for Yard Locomotives—it will be noted that the costs for trunk lines are uniformly lower than the cost for the switching and industrial roads. [fol. 516] The switching and industrial roads include in their fuel cost the freight rate from the mines to the Chicago switching district. Trunk lines generally haul the coal to Chicago as company material, claiming nothing for this company material service in their engine-hour costs. Their fuel costs are therefore somewhat lower than they would otherwise be. (Tr. 156.) Nothing is included for the transportation of other kinds of company material to

the Chicago district. The amount of company service on the switching and industrial roads is negligible, and probably, as nearly as I can estimate, less than 1 per cent of the total expense.

Due to lack of time I have been unable to check the accuracy of the engine-hour costs, but as far as my investigations have gone, I am convinced that they are conservatively low and might properly be increased to allow for the cost of transporting company material. I have not had time to determine how much we might be allowed in this direction. (Tr. 156.)

Mr. Saur enumerated certain respects of under-statements of switching costs in his exhibit. He said that operating results indicated that 14 per cent less cars were handled per engine hour and that 13 per cent more fuel was used per month during December, January and February than during the other nine months of the years 1925, 1926 and 1927. (Tr. 157.) The main factor which results in higher costs in the winter-time operation is because the output per engine hour is reduced. Mr. Sauer shows there is 14 per cent less output. That means the cost per car handled would be 16 per cent higher during the winter months than it would be during the other nine months of the year. Taking the three months of December, January [fol. 517] and February at 116 per cent, and the other nine months at 100 per cent, the base he uses, when equated indicates that if the winter months had been taken into account in the test which the roads made, it would increase the test period costs which they arrived at, which were all made in June, August and October, by 4 per cent on the average. (Tr. 157-158.)

As to greater fuel consumption in winter months, using the same basis, three months at 113 per cent of the nine months as a base, the nine months being at 100 per cent, when equated shows that if the higher fuel consumption in the winter months is taken into account it would increase fuel consumption per engine hour 3 1/3 per cent.

Less than 15 per cent of the engine-hour costs are for fuel, so that the aggregate under-charge would be 3 1/3 per cent of 15, or ½ of 1 per cent, which would reflect the amount of the increase which should be made in engine-hour costs and leave the greater fuel consumption in the three winter months.

No other important accounts would cause a higher engine-hour cost in the winter months than in the summer, spring and fall months. Wage rates are the same in the winter as they are in the summer. (Tr. 158.) The only factor that would come in would be the possibility of more overtime in the winter months than in the summer months. I do not know whether such a situation exists on the switching roads or not. The fuel item is so small that I hardly think it worth considering.

There are so many variances in the results in this case that minor items of that sort virtually have to go to the discard. The higher cost in the winter months, due to the lower output per engine-hour, is a matter of importance. [fol. 518] I find that to be 4 per cent, and the carriers' costs really ought to be augmented by that percentage. That would increase the single-line haul costs 46 cents per car; two-line hauls 53 cents per car; three-line hauls 60 cents per car. (Tr. 159.) An unusual flow of cars during the winter months might bring that average down to what it is for the summer months, if there were any crews which were not working capacity, but on the average I would doubt whether that would really result. (Tr. 159.) I know of no way of measuring the importance of several other under-charges mentioned by Mr. Saur. Perhaps a method could be used to determine the amount of undercharge due to transportation of company materials in the district. It would require quite a bit of study. I have not had time to devote a minute to that. (Tr. 160.)

Pages 5 to 37 inclusive of my exhibit show the manner in which costs were assigned by the operating representatives to the individual routes. Many thousands of those routes were compiled by railroad representatives. I had time to review only a small portion of these routes, and hence adopted the plan of keeping data for each route for the movements of important volume, and for a few small-volume routes because of the representativeness of origin and destination territory involved. Copies were made of more than 400 routings, including illustrations of one-, two- and three-line hauls. Sample car numbers up to a maximum of six, showing cars in which traffic moved, were also drawn off. (Tr. 160.) These sheets were given interested shippers to check all the information shown on the sheets, as far as possible. (Tr. 161.) Where route

sheets indicated the switching of cars into plant for routing, they were pulled out empty at destination, shippers [fol. 519] were asked to check their records as to the fact, or if such cars were reloaded. Since only a week's period was used on the matter of switching costs for each industry, shippers were also asked as to their views as to the representativeness of the particular week as applied to their situation. They were also asked to advise as to the correctness of any charges contained in the routings with which they were familiar.

Out of these 400 or more route sheets exceptions of one kind of another have been taken on a large number. Some of those questioned have been copied and reproduced in this exhibit, pages 5 to 37, along with sketches showing the routes assigned to the cars by the operating representatives. These particular routes are representative of others which were copied but not reproduced, and they are representative of many others not copied at all. A few of the routes shown in the exhibit are not questioned, but are reproduced merely to show the methods of switching traffic in the district and the circuitous hauls involved. (Tr. 161.)

On pages 38 to 41 I show the results of an analysis of the switching costs for all routes included in carriers' cost studies. Page 38 is the analysis for single-line cars. The railroads included 6,854 single-line cars on the Elgin, Joliet & Eastern which did not move within the district and should not be included in any showing purporting to represent costs of Chicago switching district traffic. This page shows distribution of costs by elements of service, with number of services assigned under each element. The right-hand column shows the percentage of total switching cars. Combining the five top items shows the cost for origin and destination service, including weighing, to be 47.6 per cent of the total cost. Eliminating team-track [fol. 520] items, 43 per cent of the total cost is for service at the industry, which embraces industry switching, switching allowances, joint switching and weighing. Some weighing is done in railroad yards, but substantially all of it is performed upon property owned and maintained by the industries. (Tr. 162.)

Twenty-two per cent of the total switching cost in classification service and about 29 per cent of the total cost is in transfer service. The latter charges include cost of

delay to transfer cars blocked at grade crossings of other railroads.

This in some instances is quite an important item. The Indiana Harbor Belt, from Lake Front Yard to the Michigan Avenue Yard, a distance of 1.7 miles, requires simultaneous clearing over five trunk line railroads, the trip taking anywhere from 15 minutes to 3 hours. The average for 17 runs in the test period was 50 minutes for the 1.7 miles. These illustrations could be multiplied, showing that switching runs are subordinated to every other class of traffic; that transfer costs are somewhat higher than if each class of traffic bore its proportion of the cost of delays incident to the operation of the intricate network of railroads in the Chicago switching district. (Tr. 163.) This page shows that 73 per cent of the total cost is for interchange of empty cars to connecting lines. Nearly all of these charges are for return of foreign-line cars, which in many instances, presumably, arrive at the reporting railroad in road-haul service, the return of the empty to the connecting line being therefore chargeable to the prior road-haul movement. (Tr. 163-164.) Along with the elimination of this interchange should go the classification and transfer cost in connection with the interchange service. [fol. 521] (Tr. 163.) It is not possible to estimate the extent of this over-charge without going into considerable work. (Tr. 164.)

Page 5 shows cost of switching service on stone from Consumers Company at McCook to the Federal Furnace Company. At the left side of the sheet are elements of service assigned to this movement by representatives of the Indiana Harbor Belt, based on their knowledge as to handling these cars, and based upon the carriers' analysis that these cars were assigned for loading at Norpaul and released from this service after delivery to the New York Central at Gibson Yard. The railroads made no investigation as to how these cars happened to be at Norpaul. (Tr. 164.) It appears to me that they arrived there in road-haul service. They may have been received empty from the St. Paul or the North Western. (Tr. 164.)

In instances like these it would not be proper to charge empty service to this movement. (Tr. 165.) The Indiana Harbor Belt receives $2.70 on empty cars on which it performs road haul, when turned back to it for delivery to an

originating road haul railroad. (Tr. 165.) The I. H. B. receives this revenue when a car is diverted by it to some destination outside the Chicago district. The Belt Railway also receives payment for empty cars handled under such conditions, its rate being $3.15. In 1926 the Indiana Harbor Belt received this rate on 332,353 cars. The Belt received its charge on 512,123 empty cars. (Tr. 165.) The B. & O. C. T. receives pay for empty movement under the foregoing conditions, but in 1926 it had handled only 9,524 empty cars, but I do not know the amount per car that company received. (Tr. 165.) The railroads should have investigated the conditions under which the cars in question reached the Norpaul yard.

[fol. 522] The last item on the sheet shows the charge for classification service at the South Gibson yard hump of $1.55 per car. (Tr. 155-156.) The Indiana Harbor Belt working papers show that charge should be approximately $1.15 per car. The error results from using engine-hour cost of $33.33 which should have been put in at $18.96 per engine hour. (Tr. 166.) The $1.55 per car was applied to 2,788 cars. The same error was made in calculating classification cost at the Gibson North hump. The cost should be 63 cents per engine hour, as compared with 84 cents as shown by the Indiana Harbor Belt. This element of service was applied to 1247 cars. Substituting my figures for the ones used would reduce the cost per car, weighed over all of the cars for all railroads, 12 cents on one-line cars and 4 cents on two-line cars. (Tr. 166.) This indicates the character of small errors disclosed by my check. There are a lot of those, not amounting to much individually, but when all are considered they run into a considerable figure. (Tr. 167.)

Page No. 6 shows the same character of error in railroads' service and costs switching fire brick from the Harbison-Walker Company, East Chicago, to the Inland Steel Company plant No. 2 at Indiana Harbor, with relation to Chicago and North Western cars. The empty haul to the Gibson yard was charged against the switching district movement. (Tr. 167.)

Page 7 shows switching service and cost on stone from A. C. O'Laughlin Company to Central Lime & Cement Company via Indiana Harbor Belt in New York Central cars. These cars were supplied to the O'Laughlin Company from

Norpaul for loading; thence returned to Norpaul, there classified and transported to Chappell, there classified and thence to Elston. After unloading at the industry they were returned to Blue Island, there classified and then [fol. 523] passed over the south hump to the New York Central. All cars passing over the south hump are in possession of the New York Central. The railroads made no investigation to ascertain the facts in connection with these movements. (Tr. 167-168.)

Page 8 shows service and costs on brick from Illinois Brick Company Yard 35 to Illinois Brick Company team track at Kedzie Avenue by Indiana Harbor Belt in Chicago & North Western cars. The switching district movement in this illustration is charged with the full return empty movement after returning to Argo and there classified. These appear to be cars returning home to the Chicago & North Western Railway after having been in road-haul service. Part of this empty cost should have been charged to the prior road-haul movement. (Tr. 168.)

All that can be charged against the switching district traffic is the empty movement for which it is responsible, which in this instance is the empty movement supplying the cars for loading at the Illinois Brick Company at Dolton, and then after unloading at the team track the empty movement from Elston out to Argo. The cost should end at that base yard. The benefit to the road-haul traffic is this: If these cars came on to the Indiana Harbor Belt in road-haul traffic, the switching district traffic has gotten the cars as far as Argo, and the empty cost beyond should not be charged against the switching district traffic. (Tr. 169.) The railroads have made no investigation as to the costs of these empty movements. The empty movements, on a large part of these cars, should end at the base yard. Our investigations show previous loading in road-haul movement. (Tr. 170.)

Page No. 9 of the exhibit shows the switching service and cost on brick from the Tuthill Building Material Com- [fol. 524] pany to the Sixty-third Street team track via the B. & O. C. T., loaded in Baltimore & Ohio cars. In this case, after unloading at the Sixty-third Street team track, the empty car was taken to Barr yard, from which it was originally supplied for loading at the Tuthill Building Material yard, and after classification at the Barr yard it was

then delivered to the B. & O. C. T. The costs incident to the latter movement are improperly charged to the switching district traffic on the basis of the facts as shown by the carriers' working papers. (Tr. 170.) The empty movement ending at Barr yard, that charged as switching district traffic, is 100 per cent empty haul. No greater charge than that could be made. There may be facts that would explain that. The railroads have made no research relating to them. I cannot see what facts would explain the situation. (Tr. 171.)

The Blue Island yard of the Indiana Harbor Belt on page 5 of my exhibit should be shown just to the right of the curve, instead of the left. Carriers' Ex. No. 6 shows this in greater detail (Tr. 171), and on page 10 the Blue Island yard of the Indiana Harbor Belt should be directly below the Barr yard of the B. & O. C. T. The two yards are about a quarter of a mile apart. (Tr. 172.)

Page 39 for two-line hauls and page 40 for three-line hauls show similar information to that contained on page 38 for one-line hauls. (Tr. 172.) Traffic to and from Gary, Indiana, by the Elgin, Joliet & Eastern are shown in the railroads' exhibits covering two- and three-line hauls, as switching district business. The movement is not entirely within the district and should not have been included in an exhibit purporting to show costs for the Chicago switch-
[fol. 525] ing district. It is not possible to exclude this improper inclusion of Gary, Indiana, traffic without going to considerable work, because the E. J. & E., in computing switching costs, included the cost from each industry to the junction point with each line to which delivered. For example, it included all costs from the Illinois Steel Company at Gary, to the Pennsylvania Railroad at Clark, irrespective of where deliveries so made to the Pennsylvania at Clark were going. From there you could not identify the consignee. The Pennsylvania, in compiling its end of the exhibit, showed all business received from the E. J. & E. going to a particular consignee, irrespective of what consignor it came from on the E. J. & E.; so it is not possible to determine, in case of Pennsylvania Railroad costs, how much of the business they received from the E. J. & E. from Gary or from other points on the E. J. & E. (Tr. 173.) It is possible to estimate the effect of its inclusion upon the two-line hauls. The E. J. & E. working papers show aver-

age switching cost per car to this company from Gary up to its connection with the destination road as $8.22. This is augmented to allow for omitted formula accounts in the manner described by Mr. Saur. (Tr. 173.) The average switching costs on two-line hauls for the Indiana Harbor Belt, the Pennsylvania, the B. & O. C. T. and the Belt Railway, which handle the bulk of E. J. & E. business, is $7.92 per car on cars received from the E. J. & E. (Tr. 173-174.) This figure added to the $8.22 mentioned, gives $16.14 as switching costs per car for two-line haul, Gary, Indiana, to Chicago switching district. This is $2.91 greater than the average shown for all two-line hauls in the carriers' exhibits. (Tr. 174.)

Carriers' working papers show 815 cars moving from [fol. 526] Gary, Indiana, to the Chicago switching district in two-line hauls. At $16.14 per car the total cost would be $13,170.00. If these cars' switching costs are excluded from the cost of two-line hauls shown in carriers' cost exhibit, it would make the average cost $13.00 per car, or 23 cents per car less than shown in the railroads' exhibit. (Tr. 174.)

These cost studies are the result of a tremendous mass of small transactions, and no single discrepancy will produce much of a difference, but the many discrepancies in the aggregate will amount to a considerable sum and become quite important. It is not possible to make similar calculations for three-line hauls, as the methods used by the carriers do not permit singling out of the cost for through movements except by combining purported individual items. (Tr. 174.)

Page 41 of my exhibit shows that 40 per cent of total switching cost is for industry switching, switching allowances, joint switching and weighing, substantially all of which services are performed upon property owned and maintained by the industries. (Tr. 175.)

Page 42 of the exhibit shows the cost per car for each element of service for the test period, compared with cost per car resulting from the application of test period results of switching district traffic moved in September, 1926. The four columns at the left are comparisons of the industry switching costs which show the district traffic average is consistently in excess of the test period average, and such consistent excess should not be expected. (Tr. 175.)

The district traffic weighted average industry cost for all roads is $2.77, and 38 cents in excess of the test period average, and 88 cents on team track switching in excess of the test period average. (Tr. 175.) Classification and [fol. 527] transfer service show the same, and interchange cost for district traffic is 9 cents in excess of the test period average. (Tr. 176.)

These results come from the application of certain abnormal test period costs to cars moving in another period when the traffic volume was heavier. To illustrate, the Pennsylvania, compiling its costs, applied industry switching, $15.82, to 85 cars of switching district traffic moved in September, 1926, from the Albert Schwill plant. The industry cost was based upon 300 switching minutes for 4 loaded cars in the week ended October 25, 1927, which was subnormal at that time, and the switching time included switches when only empties were handled. Costs of this type, if applied to switching district cars shipped by this industry in the test period, would have influenced the general average cost but little, since the plant's business was so small at the time. (Tr. 176.)

On the Indiana Harbor Belt element No. 346, team track switching at Osborne, $4.99 per car, was applied to 133 cars moving in September, 1926, that was based upon 110 minutes' switching time, handling 7 loaded cars at this team track during the week's test period in August, 1927. (Tr. 177.) The cost per car for the business moving in September, 1926, would have been very much less.

On the same route element No. 328, team track switching at Chicago Ridge, $4.21 cost per car, was applied to 62 cars of switching district traffic in September, 1926. This cost was based upon 40 minutes' time to 3 loaded cars in the August, 1927, test period. This was not representative of the business moved in September, 1926. (Tr. 177.)

On B. & O. C. T., element No. 598, industrial switching [fol. 528] at Tuthill Building Material Company, $4.66 per car was applied to 43 cars moving in September, 1926, which cost was based upon 9 loaded cars moving during the August, 1927, test period.

There are numerous illustrations of this type. (Tr. 177.) The suggestion that these abnormally high costs resulting from the small volume of business, when applied to a large volume moving in another period, are offset by

low costs resulting from higher volume in the test period applied to a small volume in the other period, is not correct, in my judgment, because a variable volume of traffic, when applied to traffic moving in another period will generally produce a higher average cost than the correct one. (Tr. 177-178.) An over-charge has resulted from the application of these widely-varying test period costs to cars which moved in another period, and demonstrates the desirability of a longer test period and the application of test period costs to cars moving in that period. (Tr. 178.)

Page 10 of the exhibit shows switching service and cost on iron and steel from Inland Steel Company plant No. 1 to the Concrete Engineering Company via Indiana Harbor Belt and the B. & O. C. T. in New York Central cars. (Tr. 179.) The operating representative assigned to cars for this movement in the cost study at Norpaul, where the cars were classified, transported thence to Blue Island, classified there; thence to Michigan Avenue yard and there classified; and then delivered to the Inland Steel Company, which loaded them for the Concrete Engineering Company, routed Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal. After unloading at Concrete Engineering Company costs were assigned for hauling the empties to Barr yard, there classified, thence to Whiting, classified there, and then delivered to the New York Central at 119th Street. [fol. 529] Calculating roughly the mileage in this movement, there are about 38 miles empty haul before loading, 35 miles of loaded haul, 35 miles empty haul after unloading, totaling 73 miles empty haul compared with 35 miles loaded haul. (Tr. 179.) Checking the record of the four car numbers respecting this movement, 2 of the cars were shipped by the Inland Steel previous to the assignment for loading to the Concrete Engineering Company, one under date of August 16th to Milwaukee for the Chicago, Milwaukee, St. Paul & Pacific, and the latter car shipped August 19th to Milwaukee via the latter road. (Tr. 180.) These New York Central cars arrived at Norpaul after being in road-haul service. The empty service in connection with this movement has been treated improperly. (Tr. 180.)

Page No. 11 shows switching service and cost on stone from Superior Stone Company to R. Chisholm Material Company via Indiana Harbor Belt and Baltimore & Ohio

Chicago Terminal in New York Central System cars. The representative of the Indiana Harbor Belt shows that the New York Central supplied these cars from Norpaul for loading at the Superior Stone Company. The loads were then classified at McCook and hauled to Blue Island, there classified, hauled to Michigan Avenue yard, classified there, and then delivered to the Baltimore & Ohio Chicago Terminal at its East Chicago yard. In this movement those cars have moved from west of the city over to the lake front, in the neighborhood of Indiana Harbor. (Tr. 180.) The Baltimore & Ohio Chicago Terminal, after delivery there, moved them to the 49th Avenue yard, classified them there, and then delivered them to the R. Chisholm Material Company. (Tr. 181.) The empties were then delivered to the New York Central at 119th Street under the assignment made by the representative of the Baltimore & Ohio Chicago Terminal.

[fol. 530] The loaded movement of these cars was 63 miles, the empty movement 45 miles, or a total of 108 miles approximately. The Superior Stone Company and the consignee of this traffic are approximately 12 miles apart by the Short Line. (Tr. 181.) East Chicago is the only point of interchange between the Indiana Harbor Belt and the Baltimore & Ohio Chicago Terminal. The Indiana Harbor Belt's Blue Island yard is only about a quarter of a mile from the Barr yard, with a brick plant between the two. Both roads enter the brick plant. (Tr. 181.) It is a continuous connection between the two roads and some years ago was used for interchange of some business. I do not know why it is not used now. There are also other routes that could have handled this traffic. (Tr. 182.) I understand that the Indiana Harbor Belt now has rights over the Belt Railway to the Fortieth Avenue yard of the Chicago & North Western. It would seem there are possibilities for practical low-cost routes for business interchange between these two particular roads which would eliminate the tremendous out-of-line haul of this particular traffic. (Tr. 182.) I do not say that 12 miles is a workable route. (Tr. 183.) I do not know, but it is the Short Line. We will give you the particular route later.

There are several shorter routes available on the movement from the Superior Stone Company to the Chisholm

plant. The shortest distance, whether workable or not I do not know, is based on the distance from McCook to the junction of the Indiana Harbor Belt with the Chicago Great Western at Bellwood, and from that point to Homan Avenue yard of the Baltimore & Ohio Chicago Terminal. As I figure it, it is about 12 miles. (Tr. 184.) This would make a one-line haul if the Baltimore & Ohio Chicago Terminal has, or could get, trackage rights from the Chicago Great [fol. 531] Western; as the latter uses the Baltimore & Ohio Chicago Terminal into the Grand Central depot, I think it would be easy for it to secure such trackage rights. (Tr. 185.) It would be a two-line haul if the Indiana Harbor Belt originates the traffic, but if the Baltimore & Ohio Chicago Terminal should originate it it would be a one-line haul. The Baltimore & Ohio Chicago Terminal already has trackage rights over the Indiana Harbor Belt all the way to Franklin Park. (Tr. 185.)

Page 12 shows switching service and cost on stone from the Federal Stone Company to the R. Chisholm Material Company via Baltimore & Ohio Chicago Terminal in Baltimore & Ohio Railroad cars. (Tr. 185.) This is a movement similar to the one shown on page 11, except as to a different shipper, and this traffic moved into Barr yard and from there to 48th Avenue and was then delivered to the consignee. (Tr. 186.) The switching cost at the Federal Stone Company was shown as $5.35 per car. It is based upon the 7 loads handled in the week test period ended August 10, 1927. The Indiana Harbor Belt has access to the Federal Stone Company. (Tr. 186.)

Page 13 of the exhibit shows switching service and cost on gasoline from the Standard Oil Company to Swan & Finch via the Baltimore & Ohio Chicago Terminal and Belt Railway. This traffic moved to Homan Avenue, thence to 48th Avenue, there classified, and then delivered to the Belt Railway at 22d Street; and by it hauled to Clearing, there classified, and then delivered to the consignee. The Baltimore & Ohio Chicago Terminal crosses the Chicago Belt directly to the right of Clearing, but shows as Clearing on the map, Ex. No. 6. (Tr. 186.) From Clearing yard, following the Belt Railway directly east, the first red line north and south is the Baltimore & Ohio Chicago [fol. 532] Terminal. (Tr. 187.) There is a track connection between them at this point, but not used as an interchange

point. Whether or not a practical interchange point I do not know, though I believe that the Baltimore & Ohio Chicago Terminal has a sufficient volume of traffic to make deliveries direct to the Belt Railway at the Clearing yard, the same as other tenant companies do. If that was done the haul to Homan Avenue, the classification at 48th Avenue, and the service of the Belt from 22d Street yard to Clearing would be eliminated. (Tr. 187.)

Page 14 shows switching service and cost on stone from the Consumers Company at McCook to McClintic-Marshall Company via Baltimore & Ohio Chicago Terminal and Belt Railway, in Baltimore & Ohio Railroad cars. This is similar to the movement shown on pages 12 and 13 of the exhibit. (Tr. 187.) Traffic originating in the McCook district on the Indiana Harbor would be delivered to the Belt Railway a short distance west of Clearing, but the Baltimore & Ohio Chicago Terminal hauls the traffic to the Barr yard, thence to 48th Avenue, then delivering it to the Belt at 22d Street, and by the latter it is hauled to Clearing. (Tr. 188.) There are possibilities of working out a much cheaper movement for this traffic.

Page 15 of the exhibit shows switching service and cost on stone from the Brownell Improvement Company to Farr Brothers, via the Baltimore & Ohio Chicago Terminal and Belt Railway, in Big Four cars, a situation similar to that shown on page 14, except this traffic is originated in the vicinity of Barr yard instead of McCook. For Farr Brothers the cost of $5.41 per car looks out of line, but I have not had time to investigate that particular item. (Tr. 188.)

[fol. 533] Page 16 of the exhibit shows switching service and cost on brick from Illinois Brick Company Yard 22 to Illinois Brick Company at Chicago Avenue, via Baltimore & Ohio Chicago Terminal and Belt Railway, in Baltimore & Ohio Railroad cars. (Tr. 188-189.) I do not understand why Baltimore & Ohio cars were taken to Clearing, then hauled to South Chicago and there delivered to the Baltimore & Ohio Railroad, instead of being delivered to the Baltimore & Ohio Chicago Terminal at 22d Street. (Tr. 189.)

Page 17 of the exhibit shows switching service and cost on brick from Chicago Brick Company to Renier Material Company via Baltimore & Ohio Chicago Terminal and

Pennsylvania Railroad, in Baltimore & Ohio cars. This sheet shows that after the cars were unloaded at the Renier Material Company they were hauled to 23d Street by the Pennsylvania Railroad and thence delivered to the Baltimore & Ohio Chicago Terminal at Homan Avenue yard, and then hauled back to Barr yard of the Baltimore & Ohio Chicago Terminal. This movement may be explained, but it looks peculiar. I cannot understand why the cars were not delivered back to the Baltimore & Ohio Chicago Terminal via the route the load traveled. (Tr. 189.) In switching the empty at the 59th Street yard of the Pennsylvania, thence delivering to the Baltimore & Ohio Chicago Terminal at Homan Avenue, it was necessary to make two classifications and a transfer at the 59th Street yard. (Tr. 190.) Hauling the car south to the connection with the Baltimore & Ohio Chicago Terminal at Barr yard, one classification and one transfer would have been saved. (Tr. 189.)

Page 18 shows switching service and cost on gasoline from Standard Oil Company, Whiting, Indiana, to the Standard Oil Company, South Chicago, via Baltimore & [fol. 534] Ohio Chicago Terminal and Chicago, Rock Island & Pacific, in tank cars. This depicts some of the most circuitous routes involved, and time has not permitted study of this movement. It is quite an out-of-line haul, but may be the most economical way in which the traffic could be handled. The Pennsylvania serves the Standard Oil Company, which would afford a route from that company with delivery to the Chicago, Rock Island & Pacific at their South Chicago yard, permitting the latter to deliver to the Standard Oil Company at South Chicago station, which movement involved different lines than the routing shown on this page. (Tr. 190.)

Page 19 of the exhibit shows switching service and cost on gasoline from the Standard Oil Company to Sherwin-Williams Company via the Baltimore & Ohio Chicago Terminal and Pullman Railroad. (Tr. 191.) This is a very long and circuitous haul. The 22d Street yard being the only point of interchange between the Belt Railway and the Baltimore & Ohio Chicago Terminal, the latter is required to haul the traffic way north to that yard. Other available routes would be, from the Standard Oil Company to Barr yard by the Baltimore & Ohio Chicago Terminal, thence to the Illinois Central at Riverdale, and from that yard by the

latter for delivery to the Pullman Railroad at Kensington, thus changing the intermediate line from the Belt Railway to the Illinois Central. This traffic could be routed via Pennsylvania Railroad and other connections through the South Chicago yard, thus avoiding the circuitous route. (Tr. 191.) It appears that the cars in this case, after unloading, were delivered empty to the Nickel Plate Railroad, so that this particular tank car traffic was not charged with a very high percentage of empty movement. (Tr. 192.)

[fol. 535] Page 20 shows switching service and cost on wheat from the Rialto Elevator to the Irondale Elevator at 107th Street by the Belt Railway and the Rock Island. These two elevators are less than a mile apart. The map on page 21 reflects their relative locations. The Rialto Elevator is at location No. 1, the fourth slip, and location No. 2 is the Irondale Elevator. After these cars were unloaded at the Irondale Elevator the operating representative charged an empty return haul to the Chicago, Burlington & Quincy against the switching district movement. The car in question arrived at the Rialto Elevator under load, so that the empty movement was made necessary by traffic that got the car in the Rialto Elevator. It is possible some of this empty movement should be charged to the Chicago switching traffic, because there was some switching district movement after the Rock Island received the car, and it had to return the car to the Chicago, Burlington & Quincy. (Tr. 192-193.) Treating these roads as a system, the empty movement would be chargeable to the prior loading of the car. (Tr. 193.)

Page 21 shows a similar movement, except after unloading it was left at the South Chicago yard of the Rock Island. In this illustration the Belt Railway operating representative assigns an empty car at the South Chicago yard of the Belt Line. It is then shown as switched to the Rialto Elevator for loading, thence taken back to the Chicago yard of the Belt Railway. But the Rock Island representative shows, instead of receiving the car at the South Chicago yard, it received it at the Rosenbaum Elevator tracks, location No. 3 on the map. The operating representatives of the two roads did not synchronize their elements of service or their costs. This shows the desirability of tracing [fol. 536] the exact routes that the cars moved. (Tr. 194.) Very little of that was done in this case; something like 200 cars, all the Indiana Harbor Belt.

In connection with the movement referred to on page 21, the Rock Island shows interchange costs of receiving this car from the Belt Railway through the Rosenbaum Elevator as $3.20, being the industrial switching cost to the Rosenbaum Elevator. (Tr. 194.) Whether that would really apply to the character of service required in making interchange at that point is doubtful.

Page 22 shows switching service and cost on corn from the Rialto Elevator to the American Maize Products Company by the Belt Railway and the Indiana Harbor Belt, loaded in Rock Island cars. (Tr. 194.) After loading these cars at the Rialto Elevator they were hauled to the South Chicago yard of the Belt Railway, there classified, then hauled to Clearing, twice classified there, and thence transferred to the Indiana Harbor Belt and delivered to it at Argo. (Tr. 195.) That road hauled the car, after classification at Argo, to Blue Island, there classified it, and then hauled it to Calumet City, classified it there, thence hauled to Burnham and again classified, and then delivered to the American Maize Products Company. The chart shows a short line route running directly south from the Rialto Elevator through Irondale. A lot of large industries are on that route and a large volume of business moves there. The Northwestern Elevator is in that locality at 118th Street, and the Belt Railway Company has a large volume of cars moving to and from the North Western Elevator. It is possible that this route will be a practical one. It would cut out a large amount of extra mileage. (Tr. 195.)

[fol. 537] Another route involving different railroads would be for the Belt, out of its South Chicago yard, to deliver the traffic to the Pennsylvania in its Colehour yard, the latter serving the American Maize Products Company. (Tr. 196.) If Mr. Barse referred to routing of the Belt Railway from South Gary, interchanging with the Indiana Harbor Belt at Irondale, it would not have to go through the South Chicago yard to the Belt Railway, and could go through their South Chicago district yard. (Tr. 197.) The Belt operates over a line of track paralleling the line used by the Indiana Harbor Belt in that territory. That is not a customary interchange point, although some interchange has been made in the past in that locality. The Pennsylvania, the Elgin, Joliet & Eastern, the Chicago

Short Line, the Belt, the Rock Island and the Indiana Harbor Belt enter that heavy-traffic district. A very large volume of business is in that territory. (Tr. 197.) The distance via the route of movement would probably be 15 or 20 miles in the aggregate. (Tr. 197-198.) The locations on the various pages of my Ex. 13 are drawn to a geographical scale. Their locations are relatively correct as related to the map, but by referring to the switching map and locating the points there gives a perspective, since they are geographically located to each other. (Tr. 199.)

Page 23 shows switching service and cost on corn from J. E. Bastien Grain Company at 12th Street to the Atlantic Elevator Company, via the Rock Island, the Belt Railway and the Chicago, Milwaukee & St. Paul. The exhibit shows the traffic being hauled by the Rock Island to South Chicago, there delivered to the Belt, then via the Belt to the Galewood yard of the St. Paul, the latter road delivering to the Atlantic Elevator. Time has not permitted a study [fol. 538] of this route or whether a more practicable one exists. It may be this is the cheapest one. However, the switching cost at Elevator A at 12th Street on the Rock Island is shown as $6.12 per car, based upon only 6 cars moving in the test period October 19 to October 25, 1927. (Tr. 199.) This seems rather high and not representative. A direct movement from this route could not be made from that elevator at 12th Street to the Atlantic Elevator at Division Street, but there are other lines that would make a shorter haul than this. There is no direct line from this 12th Street Elevator to the Atlantic Elevator, the latter being on an island. (Tr. 200.) It cannot be reached only by the St. Paul through its Division Street yard. There are a number of routes not criticised, which are inserted in my exhibit merely to show how this traffic is handled and how a lot of it is moved. (Tr. 201.)

Page 24 shows switching service and cost on waste paper from the Aetna Waste Paper Company, 24th and LaSalle Streets, to Robert Garr, via the Rock Island, the Belt, and the Chicago & North Western. The Aetna Waste Paper Company is at 24th and LaSalle Streets and the Garr Company is at the North Pier, at the Lake front, northeast from where we are. This merely shows how traffic is handled, and as far as I know I would handle it

the way it moved. I am not saying that is not the most efficient route. It merely shows some of the difficulties experienced in the handling of this traffic. (Tr. 201.)

Page 25 shows switching service and cost on iron and steel from Illinois Steel Company South Chicago plant to J. T. Ryerson & Company via Elgin, Joliet & Eastern, Pittsburgh, Ft. Wayne & Chicago, and the P. C. C. & St. L., really a two-line haul. (Tr. 202.) It shows the traffic was [fol. 539] hauled by the Elgin, Joliet & Eastern directly southeast from the Illinois Steel Company to the Kirk yard of the railroad, there classified and delivered out of that yard to the Pennsylvania at its Clark yard; there classified, transferred to Colehour, where it is again transferred. (Tr. 202.) Kirk yard is outside the switching district. The shipment was classified at Colehour, then transferred to the 55th Street yard of the Ft. Wayne, there classified over the west-bound hump; thence transferred to the east-bound hump and again classified over the latter; thence transferred to the 59th Street yard of the Panhandle and classified there; thence transferred to 16th Street, there classified, and then delivered to Ryerson & Company and the empty car hauled out and delivered to the Belt Railway Company at Clearing. (Tr. 202-203.) There is quite a large volume of business moving from the Illinois Steel Company by the Elgin, Joliet & Eastern, which delivers it to the Belt Railway in its South Chicago yard, just a short distance almost directly west of the Illinois Steel Company. The map shows the Illinois Steel Company on the north bank of the Calumet River, the Belt Railway being just west of the Pennsylvania Railroad crossing. The Belt and the Rock Island own paralleling tracks extending to the gates of the Illinois Steel Company. The Elgin, Joliet & Eastern delivers all loads routed via the Belt at the latter's South Chicago yard, and the crews run back light. The Belt Railway delivers cars out of its South Chicago yard into the Illinois Steel Company's plant, its crews running back light except when cars requiring quick dispatch are handled. (Tr. 203.)

Using this route of delivery to the Belt at its South Chicago yard, thence transporting to Clearing yard and then out of that yard to the Panhandle Railroad at their [fol. 540] 59th Street yard, would result in materially reduced cost, quite a bit less than the $18.00 shown. All two-

line business from the Illinois Steel Company South Chicago plant in connection with the Pennsylvania was routed as shown on page 25. (Tr. 204.) The cost via the route I have named would be cheaper than the route the car moved. (Tr. 204.) The Indiana Harbor Belt was mentioned, but the Belt Railway would really be the originating line. It could haul cars from the Illinois Steel Company just like numerous other railroads do out of other industries under joint switching arrangement, and then deliver to the Panhandle through the Clearing yard, which would make a two-line haul. It would be a cheaper operating cost from the standpoint of the carriers via the route suggested by me. (Tr. 204.) I suppose these cars moved by the route specified by the shipper. (Tr. 205.) It is open to some interpretation whether or not the route suggested by me would constitute a three-line haul, since the Belt Railway has tracks to the gates of the Illinois Steel Company. (Tr. 205-206.)

Page 26 of the exhibit shows switching service and cost from the Universal Portland Cement Company to the Auburn Coal & Material Company via the Elgin, Joliet & Eastern and the Belt Railway. (Tr. 206.) In this movement, after the Belt receives the cars at South Chicago, it hauls them to the Clearing yard; there classified over the west-bound hump, thence transferred to the west departure yard, classified over the east-bound hump, transferred to the east departure yard, thence transferred to Rockwell yard, at a cost of $1.46 per car; again classified at Rockwell yard and delivered therefrom to the Auburn Coal & Material Company. (Tr. 206-207.) After unloading the empties are returned to Clearing east yard flat, there classified, [fol. 541] thence transferred to South Chicago, there classified, and then delivered to the Elgin, Joliet & Eastern. (Tr. 207.) The transfer into Clearing requires four operations in that yard. It would seem that it might be feasible to drop cars for the locality in which this Auburn Coal & Material Company is located at 83d Street yard, making delivery direct therefrom. A lot of questions of this sort have arisen, with no time to investigate, and no operating witnesses have testified for the railroads, explaining these situations. In this particular movement no other transfer cost from Rock Island back to Clearing on the empty car is shown. The transfer cost alone on the load and the

empty between Rockwell and Clearing is $2.92. The Elgin, Joliet & Eastern includes nothing for returning empty cars from the Belt to the Universal Portland Cement Company. (Tr. 207-208.)

Page 27 shows switching service and cost on ice from the Consumers Company at 65th Street to the Consumers Company at Illinois Central freight house downtown on the lake front. (Tr. 208.) This page shows the circuitous route moving this traffic, going south to Colehour yard, which is about 100th Street, thence moving to the Illinois Central at Fordham and then moving to the business district on the lake front. I do not contend there is a cheaper route.

Page 28 shows switching service and cost on vinegar from the Fleischmann Company, 52d Street, to the A. P. Callahan Company, via Pennsylvania Railroad and Rock Island, in tank cars. This is another situation of the kind just discussed. (Tr. 208.) The consignee and the consignor are not far apart, but the loaded car moves south to 123d Street for delivery to the Rock Island. The empty, after unloading, is hauled as far south as Washington Heights, 103d Street, for return to the Pennsylvania Rail-
[fol. 542] road. (Tr. 209.) The Pennsylvania includes nothing for the empty car from its connection with the Rock Island back to Fleischmann Company. If the cars moved back empty, which I do not know, that cost is omitted. (Tr. 209.)

Page 29 shows switching service and cost on corn from Armour Grain Company to American Maize Products Company via Chicago & North Western and Indiana Harbor Belt, in Chicago, Burlington & Quincy cars. After unloading at the American Maize Products Company, district traffic was charged with the empty movement back to Calumet City, there classified, transferred to Blue Island, classified there, transferred to LaGrange and there delivered to the Chicago, Burlington & Quincy. The propriety of assessing district traffic with this empty movement with delivery back to the Chicago, Burlington & Quincy, is questioned. (Tr. 209.) The movement from Armour Grain Company to the American Maize Products Company may be compared with page 22 of the exhibit, showing movement from the Rialto Elevator to the American Maize Products Company. That traffic from the Irondale Elevator on the North

Western, moves via the short practical route via Calumet City direct to the American Maize Products Company. (Tr. 210.)

Page 30 shows switching service and cost of coke from By-Products Coke Corporation to New York Car Wheel Company, via the Chicago Short Line and the Indiana Harbor Belt, in Illinois Central cars. The empty cars are received from the Belt Company, loaded at the By-Products Coke Corporation, and after unloading at the New York Car Wheel Company were delivered to the Illinois Central at Dolton. Time has not permitted study of this particular route, and I do not know there is anything particularly wrong about returning these cars to the Illinois [fol. 543] Central. At the top of the page, under Route No. 400, the initials should be C. S. L. (Tr. 210.)

Page 31 of the exhibit shows switching service and cost on scrap iron from the Pullman Car & Manufacturing Company to the National Malleable & Steel Castings Company via the Pullman Railroad, the Chicago, West Pullman & Southern, and the Indiana Harbor Belt. The railroad records indicate that they were all reloads. (Tr. 211.)

Page 32 shows switching service and cost on iron and steel from the Griffin Wheel Company to General American Tank Car Company via Pullman Railroad, the Belt Railway, and the Baltimore & Ohio Chicago Terminal Railway, in Nickel Plate cars. This is a very similar movement to that shown on page 19 of the exhibit, only in the reverse direction. What I have said regarding page 19 applies to this movement. (Tr. 211.)

Page 33 shows switching service and cost on salt from Morton Salt Company to National Tea Company via Illinois Central, Chicago Belt, and Chicago, Milwaukee & St. Paul, in Illinois Central cars. The operating representative of the Illinois Central shows car interchange to the Belt at the Hawthorne yard of that company. (Tr. 212.) The Belt Railway operating representative indicates delivery of the car to it at Clearing, and includes cost from that location, again indicating the desirability of tracing actual movement of cars. Five sample car numbers were secured from Illinois Central classification costs shown at Congress Street. The Morton Salt Company, checking these numbers, finds that one was a car reloaded at their dock. The top item, 53 cents, should come out on one of these cars.

I do not show the return of that car. I could not say that the Morton Salt Company is north of Kinzie Street on the Milwaukee, as these charts may be a bit inaccurate in this [fol. 544] one respect. (Tr. 212.) We have not known in all cases the exact location of an industry with respect to the yards served by it, and time did not permit making an investigation. (Tr. 213.) Kinzie Street is north of the River, but there is a bend in the river near its mouth where it makes a turn to the north. (Tr. 213.)

Page 34 shows switching service and cost on lumber from the Edward Hines Lumber Company to Richardson Company, via Chicago, Burlington & Quincy and Indiana Harbor Belt. (Tr. 214.) The Burlington, out of its Western Avenue yard, delivered this car to the Indiana Harbor Belt, which hauled it to Elston. It was there classified, thence hauled to Argo, classified there, thence hauled to Norpaul, there classified, and thence back-hauled to the Richardson Company. The Burlington has a shorter route to the Indiana Harbor Belt via LaGrange. (Tr. 214.)

Page 35 shows switching service and cost on crushed stone from Dolese & Shepard to Wisconsin Lime & Cement Company via Chicago & Illinois Western and the Baltimore & Ohio Chicago Terminal in Illinois Central cars. The empties, originating in the Crawford Avenue yard of the Chicago & Illinois Western, were hauled from there to the loading at the quarry; the loads thence being hauled to the Barr yard, there classified, thence hauled to the Homan Avenue yard; there classified, and thence delivered to the Wisconsin Lime & Cement Company out of the Homan Avenue yard. (Tr. 214-215.) The empties were returned to the Illinois Central out of the Barr yard. (Tr. 215.) Whether or not there is a more direct route than this for the return of the empty car, I have not determined, but it would seem to me that the interchange cost of the [fol. 545] Illinois Central at Riverdale is not properly included in the cost. (Tr. 215.)

Page 36 shows switching service and cost on crushed stone from the Riverside Lime & Cement Company to Tuthill Building Material Company via the Chicago & Illinois Western, the Belt Railway and Rock Island, in Chicago & Alton cars. The empties originating at Crawford Avenue yard of the Chicago & Illinois Western were hauled to McCook, loaded at the Riverdale Lime & Cement Company,

and thence hauled back to Crawford Avenue and delivered to the Belt into Hawthorne yard; thence hauled to Clearing and there classified; thence hauled to South Chicago and classified by the Belt there; thence delivered to the Rock Island into its South Chicago yard; thence hauled to the Englewood yard of the Rock Island. (Tr. 215-216.) They were then delivered to Tuthill Building Material Company out of the Englewood yard. (Tr. 216.) The Rock Island, out of its Burr Oak yard, loaded the cars back and delivered them to the Baltimore & Ohio Chicago Terminal in its Barr yard.

Page 37 shows switching service and cost on stone from A. C. McLaughlin at Bellwood to Central Lime & Cement Company at Cragin, via Indiana Harbor Belt and the Chicago & North Western. The empty car originated at Bellwood, thence moved to the A. C. McLaughlin Company for loading; after loading transferred to Norpaul, crossing the North Western connection near Proviso yard; thence backhauled south to Chappell, there classified, thence delivered to Chicago & North Western at Wood Street. The North Western hauled it to 40th Avenue yard, thence to Cragin, from which yard delivery to the Central Lime & Cement Company was made. Delivery to the North Western at its Proviso yard could have been made. (Tr. 216.) My criticism of this movement is that the Indiana Harbor Belt was [fol. 546] the originating line, which had to deliver to the Chicago & North Western some place, and that delivery could have been made through Proviso instead of through Wood Street, the route of movement. (Tr. 217.) Although Proviso is on one of the main lines of the Chicago & North Western, over which high-speed passenger trains are operated, they run switch transfers over that line. It affords an example of the effect which passenger trains have on increasing the cost of handling switching traffic in Chicago. We have not had time to investigate the cost of moving this car via the main line of the North Western through Proviso. (Tr. 217.) It would be difficult to investigate it, because business actually moving the way it does, results in certain unit costs via the route followed. (Tr. 218.) If the unit cost is used via the route suggested, probably the index cost shown by the Chicago & North Western for the elements of service involved in this route would not be representative unless traffic actually moved through that route

and being considered in fixing the level of the cost via the same. (Tr. 218.) I did not say that it costs more over the route used. I said I did not know, but do say it seems the car could have moved via the route suggested. It looks to me like a practicable route, but I do not know.

Chairman Campbell: I presume the carriers will want to answer this testimony when we get to their rebuttal?

Mr. Davis: Certainly.

Chairman Campbell: And show whether or not these routes are practicable; and I assume that is the purpose of the criticism, to bring that very thing out. (Tr. 218.)

The Witness (continuing): I could tell a great deal more about some of these matters if copies of the results of the railroad tests were provided, as shown on Forms 103 and [fol. 547] 107. (Tr. 218-219.) These have not yet been received, and in the time available it has only been possible for me to look into the great mass of detail at which I am merely pointing an index finger. (Tr. 219.)

There are a number of various other routes as to which I have not had time to prepare a written criticism or discussion. There is a route showing movement of brick from Illinois Brick Company's yard 42 to Illinois Brick Company at Melrose Park by the Indiana Harbor Belt and Chicago & North Western (Tr. 219), showing delivery by the Indiana Harbor Belt and Chicago & North Western through the latter's Wood Street Yard. (Tr. 220.) The Chicago & North Western operating representative shows this car delivered to it at its Proviso yard, instead of Wood Street. This is along the line of the discussion a little while ago, except that Melrose Park is just a short ways east of the Proviso yard of the North Western. This movement is via the Indiana Harbor Belt, route No. 1547, and Chicago & North Western, route No. 255. Operating representatives of the two roads did not agree on the route, again showing the desirability of tracing through movement on these cars. (Tr. 220.)

The Crane Company plant is served by Chicago River & Indiana, the Illinois Northern, the Indiana Harbor Belt, and the Belt Railway of Chicago. The Chicago River & Indiana does certain switching in the Crane Company plant, spotting cars, etc. (Tr. 220.) The Crane Company does some of the switching with its own locomotives. (Tr. 221.) The Illinois Northern, the Indiana Harbor Belt and the Belt Railway applied the joint switching costs which

they paid to Chicago River & Indiana to haul cars to and from the Crane Company during September, 1926, period. [fol. 548] Illinois Northern applied the cost of 48 cars, Indiana Harbor Belt 211 cars, and Belt Railroad 50 cars. Recognition should have been given to the fact that the Crane Company does part of the switching.

The Indiana Harbor Belt route No. 84, stone from Consumers Company at McCook to A. K. Brown, Chicago Ridge, charges local switching district movement with delivery of empties back to New York Central. That charge for empties should not be included. (Tr. 221.)

Indiana Harbor Belt No. 294, brick from Illinois Brick Company at Dolton to Whiting Lumber & Coal Company, Whiting, Indiana, charges this single-line haul with delivery to The Rock Island of the empty cars. That charge should come out, these being single-line hauls.

Route No. 198, pig iron from Federal Furnace Company to New York Car Wheel Company, Hammond, Indiana, in Pennsylvania Railroad cars, single-line haul, includes charges for return of cars to the Pennsylvania Railroad at Blue Island. These charges are also questionable, a single-line haul. (Tr. 222.)

Indiana Harbor Belt single-line route No. 3, stone from A. C. McLaughlin to Public Construction Company in New York Central System cars, supplied empty from Norpaul, charges switching district traffic with empty haul from Osborne yard to the New York Central. These charges should come out.

The same thing applies to Indiana Harbor Belt route No. 1, A. C. McLaughlin Company to Public Construction Company at Osborne; also to Indiana Harbor Belt single-line route No. 429 for the same movement.

On route No. 1 were Illinois Central cars delivered to it at Blue Island. The other cars referred to were New York [fol. 549] Central cars. (Tr. 222.)

The Indiana Harbor Belt single-line route No. 17, stone from Consumers Company to Youngstown Sheet & Tube Company, Mark plant, Big Four cars supplies from Norpaul, charges district traffic with empty movement from Norpaul to McCook, which is in direction of return to home road, properly chargeable to the prior movement. The railroads did not investigate as to prior movements. (Tr. 222-223.)

Two-line haul, corn from Armour Grain Company to American Maize Products Company, Chicago & North Western route No. 104, Indiana Harbor Belt route No. 1866, in Chicago, Burlington & Quincy equipment, charges this traffic with cost of returning the empty cars from consignee to the Burlington Railroad at LaGrange. This charge is improper, for cars arrive at Armour Grain Company on road-haul service. (Tr. 223.)

Indiana Harbor Belt route No. 244, Harbison-Walker Company to Inland Steel plant No. 2, includes 2 sample cars reaching Indiana Harbor Belt in road-haul service, the cost of empty return to Illinois Central at Blue Island being charged, and which should be eliminated. (Tr. 223.)

Baltimore & Ohio Chicago Terminal route No. 147, single-line, brick from Illinois Brick Company yard 22 to Crawford Avenue team track, charges this movement with the round-trip cost from Barr yard and return with the empty, and transfer, classification and delivery cost for return thereof to the Baltimore & Ohio, the owning road, which charges should be eliminated. (Tr. 224.)

The Indiana Harbor Belt single-line route 544, Metal & Thermite Corporation to Inland Steel plant No. 2, includes cost of returning empties to the Grand Trunk, the owning railroad. These charges should come out. (Tr. 224.)

[fol. 550] The Indiana Harbor Belt single-line route No. 672, Youngstown Sheet & Tube Company, Mark plant, to Standard Oil Company, Whiting, charges cost returning empties to New York Central from south hump Gibson yard, which should come out.

Indiana Harbor Belt single-line route 527 charges cost returning empties to Chicago, Indianapolis & Louisville at Hammond after unloading at the Inland Steel plant. (Tr. 224.) One of these cars was received at East Chicago plant of Interstate Iron & Steel Company loaded with coal from the Monon Railroad. The prior road-haul movement should be charged with the empty return to the Monon, together with classification and transfer elements. (Tr. 225.)

Indiana Harbor Belt single-line route 488, Interstate Iron & Steel Company East Chicago plant to its South Chicago plant, charges empty return movement of Hocking Valley & Monon cars back to the Monon. One Hocking Valley car was received at East Chicago plant with

coal loading from the Monon Railroad. These charges should come out. (Tr. 225.)

Indiana Harbor Belt single-line route No. 310, Illinois Brick Company to E. A. Keller & Sons, LaGrange, Illinois, charges this movement with the cost of returning empties to the Rock Island at Blue Island. These charges should come out. Shippers' records of sample car numbers checked by them indicate that certain were reloaded where railroads have included costs for spotting or the return of the empty after unloading. (Tr. 225-226.)

Belt Railway single-line route No. 412, containing 4 cars out of 6 which were checked, were reloaded at Corn Products Refining Company. (Tr. 226.) The route sheet includes empty movement charge and transfer to the Clear-
[fol. 551] ing yard of the Belt Railway after unloading. These charges on the four cars should come out.

To illustrate, one of the cars, Chicago & North Western No. 46260, received at Argo under load September 14th; unloaded and released September 15th; reset for loading September 15th and billed out September 20th. (Tr. 226.) The representative of the Corn Products Company knows that the cars remain at its plant. He can testify to that later, if you desire. (Tr. 227.) This particular routing includes charge of $2.01 for switching cost of Corn Products Refining Company. On review of this figure the Belt Railway finds this charge should be $1.02. The charge of $2.01 was applied to 114 cars. (Tr. 227.)

Seven sample cars were taken from three-line hauls, oats from the Armour Grain Company to the Concrete Elevator via the Chicago, Burlington & Quincy, the Chicago Belt, and the Chicago, Milwaukee & St. Paul. (Tr. 228.) One car was reloaded at the Concrete Elevator, and the charge included for switching the empty and the transfer to Galewood yard should be excluded. I presume a witness can be put on for every one of these industries. (Tr. 228.)

Chairman Campbell: But as I say, both sides must depend upon their investigators, and we are going to allow the investigators to go in unsupported unless there is a pretty strong showing that it is intentionally wrong. (Tr. 229).

The Witness (continuing): This is one particular case where the records of the shippers show that they reloaded this car without first returning it to the base yard. I have to rely upon the result of the shippers' check. I have not had a chance to check all of them. (Tr. 230.)

I have said we checked 400 of these indexes and found it necessary to take exception to a certain number of them. [fol. 552] That is as far as I have gone. I am without knowledge as to the result if we checked every one of these indexes and every one of the cars. You might call this a sort of a "spot" check. We have the same opportunity for unintentional errors as the railroads have. (Tr. 231.)

The last route referred to its Chicago, Burlington & Quincy No. 321, Belt Railway No. 2070, and Chicago, Milwaukee & St. Paul No. 54. (Tr. 232.) Two-line haul, cornstarch from Corn Products Refining Company to Calumet Baking Powder Company via Belt Railway route 675 and Baltimore & Ohio Chicago Terminal route 644, charges classification cost at Clearing and transfer from Clearing to Argo on five sample car numbers which were drawn off. Shippers' check shows 2 of the 5 were cars arriving at Corn Products plant under load and were reloaded to the Calumet Baking Powder Company.

Indiana Harbor Belt single-line route 1330, Inland Steel Company to Majestic Iron & Metal Company, includes delivery cost of empty cars to the Inland Steel for loading. The Inland Steel on 2 sample numbers drawn off finds 2 cars were received loaded with scrap iron and returned to Indiana Harbor Belt loaded with scrap iron. (Tr. 232.) The inclusion of empty cost for the 2 cars is wrong. (Tr. 233.)

Indiana Harbor Belt single-line route 362, Inland Steel Company to Union Drawn Steel Company, includes empty delivery cost for loading at the Inland Steel Company. This company's check shows 1 car received by it loaded with scrap iron shipped by the Chicago, Milwaukee & St. Paul Railroad to the Inland Steel Company and was reloaded from the Inland Steel to the Union Drawn Steel Company, Gary. (Tr. 233.)

A three-line haul, pig iron, from Youngstown Sheet & [fol. 553] Tube Company, Iroquois plant, to International Harvester Company, McCormick works, via Chicago Short Line route 204, Indiana Harbor route 1838, and Illinois

Northern route 107. Two of the sample cars moving via this route were received at the Youngstown plant under load, and the charge included for furnishing empties at that plant should be eliminated. (Tr. 233.) The check does not show the line bringing the cars in under load or whether it was the same line that took out the loaded cars, but that would make no difference. (Tr. 234.) The Chicago Short Line is the only road serving that plant. This route includes weighing cost on the loaded car at McCormick plant of 82 cents, and 82 cents weighing cost for the empty. The International Harvester Company pays 90 cents to the Illinois Northern for every car weighed. Credit should therefore be allowed for this payment. (Tr. 234.)

Two-line haul, iron and steel, from Inland Steel Company to Chicago Bridge & Iron Works, via Indiana Harbor Belt route 1641 and Chicago, Rock Island & Pacific route 90, includes empty switching cost from Michigan Avenue yard to Inland Steel plant for loading of five sample cars. The Inland Steel Company check shows each car was received loaded at its plant and reloaded out to Chicago Bridge & Iron Works. (Tr. 235.)

Two-line haul, Inland Steel Company plant No. 1 to A. M. Castle & Company, via Indiana Harbor Belt route 1171 and Chicago, Milwaukee & St. Paul route 36, includes empty movement cost to Michigan Avenue yard for Inland Steel Company for loading, which car was received by the Inland Steel Company under load. Five other cars in the sample were properly handled by the carriers. (Tr. 235.)

[fol. 554] Indiana Harbor Belt single-line route 352 includes empty haul cost after cars were unloaded at Inland Steel Company plant No. 1. Out of 3 sample car numbers Inland Steel Company's records show 1 moved out under load.

Indiana Harbor Belt route 348, single-line, stone from Federal Stone Company to Inland Steel Company plant No. 1, shows out of 5 cars charged with empty haul from the plant, 3 moved out loaded. (Tr. 235.)

Indiana Harbor Belt single-line route 15, stone from Federal Stone Company to Inland Steel Company plant No. 1, includes empty switching cost from plant after unloading, to Michigan Avenue yard, while Inland Steel's records show 3 of the 5 cars sampled moved out loaded. They do not show what the load was. (Tr. 236.)

Indiana Harbor Belt single-line route 522, Hyman-Michaels & Company to Inland Steel Company plant 2, includes empty switching charge from East Chicago yard to Hyman-Michaels & Company for loading. Three out of the 5 cars sampled were reloaded at Hyman & Michaels. This route also includes charge of 62 cents for weighing empty, and the same charge for weighing the load. Hyman-Michaels pay the Indiana Harbor Belt for spotting cars on the scale.

Indiana Harbor single-line route 523, Hyman-Michaels & Company to Inland Steel Company plant 1, includes empty switching charge from East Chicago yard to Hyman-Michaels & Company on 5 cars. This company's records show all those cars were reloads. (Rec. 236.)

Two-line haul, Williams Iron & Steel Company to Inland Steel Company plant 2, via Chicago, Burlington & Quincy route 168 and Indiana Harbor Belt route 1466, includes [fol. 555] empty switching charge from Inland Steel Company plant to Michigan Avenue yard. Inland Steel Company's records show all three cars sampled were reloaded at its plant. (Tr. 237.)

Sellers Manufacturing Company to Inland Steel Company plant 2, via Chicago & North Western route 123 and Indiana Harbor Belt route 1489, includes empty switching charge from Inland Steel Company plant to Michigan Avenue yard. Inland Steel Company's records show that the 6 cars sampled were all reloaded at its plant.

Indiana Harbor Belt single-line route 378, Stock Yards Scrap Iron & Metal Company to Inland Steel Company plant 2, includes classifying charge and furnishing empty to Stock Yards Iron & Metal Company for loading, while this company's records show this car was a reload. (Tr. 237.)

Indiana Harbor Belt single-line route 1332, Standard Steel Company to Inland Steel Company plant 2, includes empty switching charge from Inland Steel Company plant to Gibson yard, and then cost of delivering car to Illinois Central at Blue Island. (Tr. 237-238.) Standard Steel Company received this car loaded with lumber. (Tr. 238.) This empty movement is chargeable to prior lumber load.

Indiana Harbor single-line route 881, Inland Steel Company to Standard Forgings Company, includes cost empty switching from Michigan Avenue yard to Inland Steel

Company for loading. Two of the 5 sample cars reached Inland Steel Company under load; and by it were reloaded to Standard Forgings Company. (Tr. 238.)

Indiana Harbor Belt route 889, and Pennsylvania Railroad route 193-E, two-line haul, iron and steel from Inland Steel Company to Graver Corporation, includes cost empty switching from Michigan Avenue yard to Inland Steel plant for loading. Of 7 sample cars 4 reached Inland Steel Company loaded and were reloaded by it to Graver [fol. 556] Corporation. (Tr. 238-239.)

Indiana Harbor Belt single-line route 376, Illinois Car Manufacturing Company to Inland Steel Company plant 2, includes empty switching charge from Inland Steel Company to Michigan Avenue yard. Four of the five cars sampled were returned to Indiana Harbor Belt loaded outbound with steel. (Tr. 239.)

Indiana Harbor Belt single-line route 650, iron and steel from Inland Steel Company to General American Car Company, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. Three of the four sample cars taken reached Inland Steel Company under load.

Indiana Harbor Belt single-line route 336, Inland Steel Company plant 2 to Crane Company, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. Of the 2 sample cars taken it appears that both were received by Inland Steel Company under load. (Tr. 239.)

Indiana Harbor Belt single-line route 465, Valley Mold & Iron Company to Youngstown Sheet & Tube Company, Mark plant, includes empty switching charge from the Mark plant to Michigan Avenue yard. The records of the industry show that of 5 sample car numbers taken, all were shipped out under load. (Tr. 239-240.)

Indiana Harbor Belt single-line route 210, Youngstown Sheet & Tube Company, Mark plant, to Interstate Iron & Steel Company, South Chicago, includes empty switching charge to the Youngstown Company for loading. Of 4 sample car numbers it is indicated that 2 were received under load and reloaded by the Youngstown Company to the Interstate Iron & Steel Company. (Tr. 240.)

[fol. 557] Two-line Indiana Harbor Belt route 909, Pennsylvania route 54-A, billets from Youngstown Sheet &

Tube Company, Mark plant, to Acme Steel Company, includes empty switching charge from Michigan Avenue yard to Youngstown Company. The company's records show 1 car out of 6 samples was received loaded, and reloaded to Acme Steel Company. (Tr. 240.)

Indiana Harbor Belt single-line haul, route 217, Inland Steel Company to Interstate Iron & Steel Company, South Chicago, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. Two of the three sample car numbers taken appear to have been received under load and were reloaded out. (Tr. 240-241.)

Indiana Harbor Belt single-line route 668, Inland Steel Company to Champion Rivet Company, includes empty switching charge from Michigan Avenue yard to Inland Steel Company for loading. The industry's records show that 1 car of the 5 samples was received loaded and forwarded loaded to Champion Rivet Company. (Tr. 241.)

Indiana Harbor Belt single-line haul, route 245, Harbison-Walker Company to Inland Steel Company plant 1, includes empty switching charge after unloading. It is indicated that 2 of the 4 sample car numbers were reloaded by the Inland Steel Company. (Tr. 241.)

Indiana Harbor Belt single-line haul route 771 includes empty switching charge from Inland Steel Company to the Pennsylvania Railroad at Indiana Harbor. This empty movement would be chargeable to prior loaded movement if the cars reached the Indiana Harbor Belt in road-haul service. (Tr. 241.)

[fol. 558] Leopold & Cohen Iron Company to Inland Steel Company plant 2, Illinois Northern route 200 and Indiana Harbor Belt route 1756, includes empty switching charge from Inland Steel Company plant 2 to St. Paul Railroad. Of 4 cars sampled 1 moved out under load from the steel company's plant. Apparently there was no investigation by the railroad as to the propriety of this interchange service to the St. Paul to this particular switching movement on the remaining 4 cars. (Tr. 242.)

Other routes include element costs which appear out of line. Pig iron from the Youngstown Sheet & Tube Company, Iroquois plant, to Whiting Corporation, via Chicago Short Line route 201, Baltimore & Ohio Chicago Terminal route 668, and Chicago Short Line route 14, includes $3.44 transfer cost to the Baltimore & Ohio Chicago Terminal

at Whiting. This charge looks out of line. Whether it is high because of subnormal volume or because of operating movement required, I do not know. It needs some explanation. (Tr. 242.)

In this route the Baltimore & Ohio Chicago Terminal includes a transfer charge of $1.20 from Harvey Junction to Phoenix, a very short distance away, which charge looks out of line. (Tr. 242.) There is also an included charge of $2.24 per car for transfer from Phoenix to Whiting Corporation, which seems high, and then an industry switch cost of $3.19 at the Whiting Corporation, with a further transfer charge of $1.84 from Whiting Corporation to Phoenix, the latter for moving the empty. (Tr. 242.)

The Baltimore & Ohio Chicago Terminal shows $2.24 cost in one direction from Phoenix to Whiting and $1.84 in the opposite direction. (Tr. 243.) The Baltimore & Ohio Chicago Terminal is the only one making the test that [fol. 559] separates their transfer costs by directions. As a result a lot of incongruities appear. That company has also set up transfers between all intermediate runs on long transfers. (Tr. 243.) To illustrate, the long transfer from Whiting to the connection with the Belt Railway at the latter's 22d Street yard, four piecemeal transfers appear: Whiting to Barr yard, 39 cents; Barr yard to Homan Avenue, 61 cents; Homan Avenue to 48th Avenue yard, 41 cents; 48th Avenue yard to 46th Avenue, 17 cents; then an interchange to the Belt at 22d Street and 46th Avenue of 37 cents, totaling through transfer cost of $1.95 per car. (Tr. 243-244.) This cost was used extensively and applied to a great number of cars.

Indiana Harbor Belt cost from Gibson to Norpaul, a slightly greater distance, is but 64 cents in a through traffic for that movement. (Tr. 244.)

The Baltimore & Ohio Chicago Terminal transfer from Whiting to the Belt at 22d Street and 48th Avenue moves in through trains and the cost should be calculated and assigned on that basis. (Tr. 244.)

The Indiana Harbor Belt singleline route 110, Illinois Car Manufacturing Company at Burnham to Hutchins Lumber & Storage Company at Blue Island, includes industry switching cost of $7.29 for the latter industry, which seems high.

Referring to the element sheets of Indiana Harbor Belt it is based on 5 cars in 7 days. (Tr. 244.) Stone from

the Consumers Company, McCook, to Sumner-Solditt Company, 87th Street, Indiana Belt Route 1038 and Belt Railway Route 748, includes Indiana Harbor Belt transfer cost from Argo to the Belt connection, just a short distance, of $2.31, which cost was applied to a very large number of cars. (Tr. 244.)

[fol. 560] I have located 368 cars to which it was applied; whether to more than that I do not know, but that cost is decidedly out of line when compared to the volume to which it applied in September, 1926. Most of the illustrations used relate to the Indiana Harbor Belt because it was the first road I investigated and I spent more time on it than with any of the others. In a brief way I have reviewed some of the latter roads and their calculations, the result of which I have not had time to review in the way I have the working papers of the Belt, the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt and the Pennsylvania Railroad. (Tr. 245.) The working papers of these roads I got first and have worked them as far as I could at the time at my disposal. (Tr. 245.)

The application of all these elements, Mr. Chairman, which they developed, has been since the test was made, and my access to the working papers showing the use of these elements was not until March 8th. (Tr. 247.) I have not had access to the cost for each element of the service which they develop as a result of the test and as applied to the movements. (Tr. 248.) A review of this cost for each element would not mean much unless we find out how many times the railroads use them in the compilation of their cost study.

Before continuing my direct statement, I would like to get a clear understanding as to just what we are to do on this. As I understand it now, nothing is to be done with the particular routes that I have already testified to.

Chairman Campbell: That is all.

The Witness (continuing): The carriers will proceed to investigate the ones which differ from what we show and we will try to agree on those particular ones. On the re-[fol. 561] maining routes which we have not yet discussed, I will prepare a statement showing what they are and outline our exceptions to them, and furnish the same to the carriers prior to the next hearing. (Tr. 250.)

In addition to the criticism of the routes, there are other exceptions found in connection with other phases of the carriers' cost studies (Tr. 251), which, before proceeding with my memorandum, I will discuss. (Tr. 252.)

In the switching district there are a large number of industries served by two or more railroads where each railroad enters the plant with its own engines and spots and pulls cars. (Tr. 252.) In parts of the city that practice has been supplanted by joint switching arrangements where one carrier will do the spotting and pulling for all other railroads. In the southern part of the city there is a lot of that. (Tr. 253.)

The International Lead Company is switched by the Baltimore & Ohio Chicago Terminal, showing a cost of $10.96 per car based upon 3 cars in the test period; the Indiana Harbor Belt shows $2.63 cost per car for 123 cars switched in the test period; the Pennsylvania Railroad shows $7.91 per car cost, 2 cars being switched in the test period. (Tr. 253.) The Bates Expanded Steel Trust Company, the Metal & Thermit Company, the Northern Indiana Public Service Company, Champion Rivet Company, Majestic Iron Company, Chapin & Company, the Super Heater Company, Lavin & Company, E. B. Lannon and Harbison-Walker Company are industries of that type. These are companies for which costs have been shown in the carriers' element sheets. These costs vary all the way from $1.17 per car to $18.62 per car, depending largely upon the number of cars handled. (Tr. 253.)

[fol. 562] A joint switching arrangement would reduce these costs at these industries or other industries switching in a similar manner. (Tr. 254.)

The Hubbard Steel Foundry Company is another one switched by the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt and the Pennsylvania Railroad, and the Cicero district is served by the Belt Railway and the Baltimore & Ohio Chicago Terminal, and both companies enter the plants with their own engines, performing switching service.

Two companies for which costs are shown are the La-Salle Steel Company and the Kropp Forge Company. Situations of that kind are throughout the city. The Concrete Elevator Company is another that is switched by both the Chicago & North Western and the Chicago, Milwaukee

& St. Paul. The North Western shows a switching cost of $8.22 and the Chicago, Milwaukee & St. Paul of $1.99 per car. The first is on a loaded car basis and the latter on a loaded and empty basis. That means that they counted the empty car and the loaded one removed as another car. (Tr. 254.)

The manner of interchange of cars between railroads I have not had much time to investigate. But there are many instances where one railroad will move cars to the yard of another and return light, the other railroad performing exactly the same service moving cars to the first road, and its crews returning light. (Tr. 255.) There are instances where one railroad does all the interchange work in connection with particular carriers. The effect of this on the district as a whole, I do not know, but some tendency to increase cost is indicated. One instance referred to this morning is where the Elgin, Joliet & Eastern takes cars from the Illinois Steel Company to the South Chicago yards of the Belt Railway, running back light, and the Belt [fol. 563] moves cars from its South Chicago yard to the Illinois Steel Company, running back light. (Tr. 255.)

Page 43 of my exhibit shows adjustment of switching cost per engine hour, allowing for ownership and maintenance of plant-tracks by the owning industries, and that smaller engines are generally used in industry and weighing service and other services. (Tr. 255.) The railroads have uniformly used the same engine costs for industry service as for other services. (Tr. 256.) Separate engine-hour costs for its two hump yards are used by the Indiana Harbor Belt, but the costs used for all other classification yards and all other services were the same, which method clearly results in an over-charge.

The adjustment shown on page 43 makes allowance for this. I have used $10.00 as the typical cost per engine hour for engines performing industry service and weighing service at industries. (Tr. 256.) This $10.00 is an estimate, but can be verified by the application of a formula for the ascertainment of costs for the various operating expense accounts incident to the operation of engines in industries. In the Chicago district allowances for switching service performed by them are made to certain industries under a railroad formula.

The Standard Oil Company receives $1.75 per loaded car, which includes interest on cost of locomotive and used

in the carriers' cost assignment, and is based on an engine-hour cost of $8.91. (Tr. 256.) The Standard Oil Company uses locomotives with tractive power of 39,000 pounds, comparing favorably with the size of carriers' engines used in industry service. (Tr. 256-257.)

The Indiana Harbor Belt's typical industry engine has 33,700 pounds tractive power, but it uses other engines of [fol. 564] 52,000 pounds tractive power to perform a considerable portion of industry switching. (Tr. 257.) The average tractive power of all engines performing industry switching on the Indiana Harbor Belt during the test period was 38,796 pounds, which is substantially the same as the tractive power of the locomotives used by the Standard Oil Company. (Tr. 257.)

The Federal Furnace Company receives an industry allowance of $1.69. In 1926 its engine-hour cost for the items of expense included in this allowance was $6.38. The Federal Furnace Company owns 3 locomotives, 2 of which have a tractive power of 37,000 pounds; the other is not known.

Ex. No. 2, showing engine-hour costs for industrial railroads, throws some light on engine-hour costs for industry service. Engine-hour costs for maintenance of equipment and transportation service on these railroads, omitting for crossing protection, yard switching, signal tenders, station expenses and joint operating facilities, as compiled from Ex. 2, is as follows: (Tr. 257.) Chicago, West Pullman & Southern, $10.31; Chicago Short Line, $9.04; Chicago & Illinois Western, $10.45; Illinois Northern, $11.57; Pullman Railroad, $11.93. These figures do not include a portion of the general expenses. (Tr. 258.) A substantial portion of engine time in transfer and classification service on these railroads requires the use of heavier tractive power. The tractive power of locomotives of the Chicago, West Pullman & Southern ranges from 22,500 to 44,600 pounds; Chicago & Illinois Western, from 22,680 to 51,041 pounds; Illinois Northern, from 27,400 to 46,000 pounds; Pullman Railroad, from 20,320 to 34,400 pounds.

The average tractive power of locomotives on the Chicago Short Line is 34,275 pounds. (Tr. 258.) The locomotive tractive power of the other railroads in the test is [fol. 565] as follows: Baltimore & Ohio Chicago Terminal, from 26,000 to 45,200 pounds; Belt Railway, from 31,200 to 84,000 pounds; (Tr. 258;) Pennsylvania Railroad, 35,000

to 52,000 pounds; (Tr. 259;) Illinois Central, from 19,440 to 88,400 pounds; Indiana Harbor Belt, from 33,700 to 87,700 pounds.

In shoving cars over the humps the heaviest engines are used; the next heaviest usually assigned to other classification work, transfer and interchange, with some industry service. (Tr. 259.) The assignment of the smallest locomotives to industry service is the general practice. The railroads named are the only ones included in the test which have furnished information as to the tractive power of their locomotives and their assignment. (Tr. 259.)

The average engine-hour cost of the Indiana Harbor Belt, the Belt, the Baltimore & Ohio Chicago Terminal, and the trunk lines would not be representative of industry switching, because smaller type of engine is used for it, smaller than the average engine on these roads or the average used by the trunk lines. Smaller engines cost less for locomotive repairs. (Tr. 259.) They use less fuel, and slightly lower wage rates apply. (Tr. 259-260.)

In view of the foregoing facts, the use of $10.00 as a representative engine-hour cost in industry service seems fair. (Tr. 260.)

The figures on page 43 described as "Adjusted Costs per Engine Hour" result from using the $10.00 per engine hour for weighing and industry service, and raising costs for other services by the amount of reduction made in the weighing and industrial cost.

The next two lines below show percentages of change [fol. 566] in the engine-hour costs for each class of switching service.

The next section shows similar calculations, omitting the Elgin, Joliet & Eastern. The words "Percentage of Charge" on the left-hand side of page 43 should be changed to "Percentage of Change."

I omitted the Elgin, Joliet & Eastern from the lower section of page 43 because 60 per cent of that road's engine hours are in industry switching outside the Chicago switching district (Tr. 260), and because at the Illinois Steel Company at South Chicago all classification work done within the plant was included in the industrial time. (Tr. 261.) The omission of the Elgin, Joliet & Eastern from the calculations makes the percentage of charge more representative. (Tr. 261.) Any one can substitute any engine-hour cost he chooses in these calculations. Perhaps

the engine-hour cost is too low, that something higher should be used, but there is the possibility that a lower cost should be used. (Tr. 262.) Accurate figures cannot be given unless a test is made for the purpose of developing it.

Page 44 of the exhibit shows the estimate of the over-charge switching cost resulting from application of the general average cost per engine hour to industry switching and weighing service on industry property. It shows that the over-charge, including Elgin, Joliet & Eastern in the basis calculations, is 79 cents per car, and omitting the Elgin, Joliet & Eastern from the calculations is $1.03 per car. These are weighted averages for one-, two- and three-line hauls. (Tr. 262.)

In this calculation it is assumed that all industry engine hours and all weighing engine hours are upon property owned and maintained by the industry. (Tr. 262-263.) This is not entirely so. (Tr. 263.) In a few instances [fol. 567] weighing is performed in railroad yards and some engine hours assigned to industry switching include running time on tracks owned by the railroad up to the industry lead. Therefore both amounts of 79 cents and $1.03 are slightly over-stated. (Tr. 263.)

Page 45 is an analysis of car detention, giving distribution point, number of cars according to the number of days' detention. A large percentage of cars show surprisingly large detention, and how much of this is caused by empties and how much by loaded car cannot be told. There are instances of car detention as high as 23 days. If time forms a proper basis for determining car repairs it is inconceivable that such time should be ascribed to switching district traffic. (Tr. 263.)

The railroads have assigned to switching district traffic the car days multiplied by the average repairs per car day. This is not a proper basis. I do not know what a proper basis is. (Tr. 263.) The question has been studied many years by cost analysts, and about the only conclusion that can be reached is to select a basis which produced the most conservative result under the conditions involved in each proceeding. (Tr. 263-264.) I have used the car basis in a number of cases, but with full knowledge that the resulting cost was not the actual cost, but that it produced a conservative result, from my viewpoint. (Tr. 264.) The railroads should have adopted a conservative method,

which from their point of view in this case would mean conservatively low instead of conservatively high, as they have worked it out? I offer a basis which considers the time in service and the mileage of the cars, the two most important considerations in the question of car repairs. (Tr. 264.)

[fol. 568] Exhibit No. 3 shows cost per serviceable car day of 64.35 for repairs, depreciation and retirements for freight cars, and a proportion of the overhead and general expenses, separating this amount between repairs with its proportion of overhead on the one hand and depreciation and retirements with overhead on the other, the average is 49½ cents for repairs and 14.76 cents for depreciation and retirements. (Tr. 264.) A formula prepared by the American Railway Engineering Association after a study, separates the proportion of each maintenance account attributable to use and the percentage not affected by use, which is reproduced on page 1060, March 1932 bulletin of that association and which has been extensively used by railroads and others in cost accounting problems. (Tr. 265.) It shows 65% of freight train car repairs are attributable to uses and 35% not affected by use. Applying these percentages to the repairs per car day, produces 32.23 cents for repairs affected by use and 17.37 cents relate to time. The depreciation and retirements per car day of 14.75 cents added thereto, gives 32.12 cents per car day relating solely to time. The balance of the repairs 32.23 cents affected by use, mileage being the main factor, equals 1.1 cents per car mile, based upon an average of 30 miles per car day during 1926. (Tr. 265.) This gives two basic figures 1.1 cents per car mile, for the used part of car repairs, depreciation and retirements and 32.12 cents per car day for the time proportion of repairs, depreciation and retirements. (Tr. 265.) Estimating 20 miles per trip for single line hauls, not to exceed 40 for two line hauls and not to exceed 50 for three line hauls and applying these costs to such mileage by multiplying them by 1.1 cents, gives for used portion of car repairs, depreciation and retirement, 22 cents per car for single line hauls, 44 cents for two line hauls and 55 cents for three line hauls. (Tr. 266.) The [fol. 569] railroad shows an average of 6.6 days detention for the average single line car, 7.55 for the average two line car, and 8.7 for the average three line car. On page 45 of

the exhibit appears "average detention per day," which should be "per car." Multiplying each of the foregoing figures by 32.12 cents per car day, produces a cost for the time proportion of repairs, depreciation and retirements of $2.11 per single line car, $2.42 for two line car and $2.78 for three line car. Adding these amounts to the mileage part of such costs previously referred to, makes a total of $2.33 for single line cars, $2.86 for two line cars and $3.33 for three line cars. Mileage is assumed to reflect use though not entirely correct since damage to cars in extra switching involved in terminal service and that from loading and unloading cars is ignored. A summary of repairs, depreciation and retirements for 1926 on the eight switching railroads make these switching tests show $784,440. These roads owned or leased 2,656 cars. Normal owner repairs and depreciation would be at least $150.00 per car or $398,400 for all. Deducting this from $784,440 leaves $386,040 representing repairs to foreign cars for which these roads were responsible. They handled 2,642,284 loaded cars in 1926. Dividing $386,040 by 2,642,284 cars, produces 15 cents per car as the repairs for which those roads were responsible. (Tr. 267.) In addition, I worked out under time and mileage basis to allow for damage to cars resulting from switching operations. The 64 cents per car day in carriers exhibits includes such damage and is not the basic figure. It would be improper to augment my figures by 15 [fol. 570] cents for a single line haul, 30 cents for two line haul and 45 cents for three line haul, although I have added these amounts to each of the costs worked out under the time and mileage basis which gives a single line cost of $2.48 per car, two line cost $3.16 per car and three line cost $3.78 per car. The railroads' exhibit shows $4.25, $4.86 and $5.61 for these costs respectively. That exceeds my figures by $1.77 for single line haul, $1.70 for two line hauls and $1.83 for three line hauls. Mine is not claimed to be the correct method but is offered as a basis which reflects both time and mileage with an allowance for switching damage and which may be conservatively low from the railroads' viewpoint. (Tr. 268-269.)

The more important overcharges are:

First: Assessing cost, returning foreign line cars to owning railroad where such cost would be chargeable to prior movement.

Second: From application of test period cost to cars which moved in 1926.

Third: To inclusion of car detention time for tank cars and private line cars for which mileage is paid for but part of haul on some roads.

Fourth: From application of average engine hour costs to engines in industry and weighing service.

Fifth: From application of industry and weighing cost to all cars to and from Inland Steel Company where that company does some of its switching by its own locomotives. 729 one line cars were subjected to these costs, producing a charge of $4,290 and 750 two line cars were subjected to such costs producing $4,414. (Tr. 269.)

[fol. 571] Sixth: From assignment of car repairs on time basis, ignoring other factors affecting car repairs. (Tr. 269.)

Seventh: From excess cost per hundred pounds, shown in final exhibit, due to cars weighing less than the 60,000-pound minimum were used in actual weight instead of on basis of weight on which the rates apply. The effect of this is demonstrated in railroads' Ex. No. 7, where quite a number of commodities with average loading of 60,000 pounds or less. The average used was based on actual loading, in reaching cost per hundred pounds shown in the exhibit, for each commodity as well as the weighted average for all commodities. (Tr. 270.)

Eighth: From omitting demurrage collected from shippers; an item of some importance. I have been unable to spread over all the loaded cars terminating in the Chicago switching district because of inability to secure accurate information.

Ninth: From charging switching traffic with all costs due to delays from superior rights of passenger and road freight trains. (Tr. 270.)

Tenth: From inclusion of higher cost traffic from Gary, Indiana, on two-line hauls. (Tr. 270.)

Eleventh: From use of incorrect engine-hour cost in calculating classification cost at Gibson north and south humps on Indiana Harbor Belt. (Tr. 271.)

Twelfth: From inclusion of rental charges paid Atchison, Topeka & Santa Fe Railway by Illinois Northern. This carrier leases certain tracks from the former, but which the latter maintains. The $1.37 charge applied on all business moving over the leased portion is simply a rental charge, not an operating expense, and is handled as rent in its accounts. This charge should be eliminated, and would decrease average cost on two-line cars 3-½ cents per car and on three-line cars 24 cents.

[fol. 572] Thirteenth: From applying Chicago River & Indiana joint switching costs at Crane Company on all cars to and from Crane Company via Indiana Harbor Belt, the Belt Railway, and Illinois Northern.

Fourteenth: From omitting credit of the weighing rate collected from shippers paying this charge on switching district traffic. (Tr. 271.)

Fifteenth: Over-charge in station expenses of Chicago, West Pullman & Southern, which will be covered in statement of exceptions to be given railroads later on. Tr. 271-272.)

The following is a summary of under-charges, some of which are claimed by the railroads and some of which have been developed by me (Tr. 272):

First: Omitting costs of transporting company material.

Second: Omitting allowance of higher operating costs during winter months than applied during test periods of June, August and October.

Third: Omitting proportion of main track maintenance of trunk lines applicable to switching traffic.

Fourth: Omitting cost returning certain portion of empty cars on intermediate hauls.

Fifth: Omission by some railroads of empty service on two- and three-line cars returned to originating road, and omitting costs from interchange point back to industry of tank and coke cars. (Tr. 272.)

Sixth: Omitting Belt Railway intermediate line costs on traffic between Chicago & North Western and the Penn-

sylvania Railroads, 109 having been interchanged between these roads in September, 1926. The number included in [fol. 573] the study is unknown. (Tr. 273.)

Insufficient time has prevented definite measurement of the importance of these over-charges and under-charges, but it is clear that the railroads' costs are over-stated.

Car repair costs, adjusted as suggested by me, ignoring all other variable items, would reduce the railroads' per car costs for single-line hauls to $14.51, for two-line hauls to $17.26, for three-line hauls to $19.81, and to $16.26 for the weighted average of all. (Tr. 273.)

The reduced single-line per car cost equals 1.7 cents per hundred pounds and makes, on the present 2½ cent rate, an operating ratio of 68 per cent. The reduced two-line per car cost equals 2.01 cents per hundred pounds, and on the present 2½ cent rate gives an 84 per cent operating ratio. (Tr. 273.) The reduced three-line per car cost equals 2.37 cents per hundred pounds, giving on the present 3 cent rate an operating ratio of 79 per cent. The weighted average of these operating ratios, based on the cars shown in Ex. No. 7 for one-, two- and three-line hauls combined, is 76 per cent, compared with the carriers' 84 per cent ratio, without revision of their figures. (Tr. 273-274.) The operating ratio on switching district traffic, with car rapairs adjusted to a more conservative level, is around 76 per cent, but does not take account of various other errors which I have not had time to contrast. (Tr. 274.)

Page 46 of the exhibit shows average operating ratio, investment return earned upon tentative value of the 9 switching railroads operating in the Chicago district for the years 1925, 1926 and 1927. These carriers receive a [fol. 574] high proportion of Chicago switching district traffic revenues, and may be considered fairly typical of the results from switching operations in this territory. (Tr. 274.)

Page 42 of the exhibit shows trunk line costs for each element of service compare favorably with those of the switching railroads, and indicate that switching district rates are about as profitable to the trunk lines as to the switching roads. (Tr. 274-275.)

All included in this exhibit are switching railroads except the Baltimore & Ohio Chicago Terminal, which is also a terminal company sharing the use of some of its facilities

with other railroads. This also applies in a degree to the Chicago River & Indiana, which includes the operations of the Chicago Junction. (Tr. 275.)

Page 47 contains explanatory notes showing how the figures were compiled. Note "H" shows the Belt Railway is owned by 13 tenant railroads using the Belt Railway facilities in connection with their operations, each paying its part of joint operating expenses on a user basis, and in addition paying, on a user basis, a sufficient amount to pay 6% annual dividends on the capital stock.

Some years ago the tenant companies paid large amounts to the Belt upon a proportionate amount of wheelage for each tenant company, these payments being credited to account 508, Joint Facility Rent Income. (Tr. 275.) A reverse situation appears in recent years. The Belt Railway operations have been profitable, which necessitated distribution of excess earnings either in dividends or some other way. To date these payments have been made to the tenant companies on a wheelage basis sufficient to reduce net income to an amount approximating 6 per cent upon the [fol. 575] capital stock, all payments being debited to the credit account 508, Joint Facility Rent Income. (Tr. 276.) Converting the credit into a debit account really compensated the tenant companies for operating over the tracks of the Belt Railway. The payments to the tenant companies are really surplus earnings, distributed on a wheelage instead of on basis of stock ownership, and should be added to the net railway operating income reported to the Commission. (Tr. 276.) Otherwise the Belt can never earn, under this accounting method, more than approximately 6 per cent on its common stock.

On page 46 tentative valuations by the Interstate Commerce Commission have been used for the roads, except as to the Chicago Belt, its valuation being the Commission's final one. (Tr. 276.)

The average operating ratio for the 9 switching roads was 70.24 per cent; their earnings were 6.36 per cent on investment and 8.33 per cent upon tentative value. (Tr. 277.) A high density of traffic prevails on these switching railroads; they grant and receive numerous trackage rights to operate on property of industries in originating and terminating traffic, and require a less margin of profit above operating expenses than if they owned all property on which they operate. (Tr. 277.)

Page 43, sixth line from bottom, shows by combining items in weighing and industrial columns, that $117,000 of switching cost is connected with industry service and weighing service, substantially all of which is on industry property. This equals 15 per cent of total switching expense.

Page 41 shows 40 per cent of district switching expense is connected with industry and weighing service, all performed substantially on industry property. Clearly a less [fol. 576] margin above operating expenses is required for switching district traffic than for other switch traffic handled by the roads. (Tr. 277.)

Page 46 of the exhibit shows switching roads need an operating ratio of 72.2 per cent to permit 5.75 per cent earnings on investment, and 76.8 per cent ratio to earn the same rate on the Commission's tentative valuation. (Tr. 277-278.) Forty per cent of district switching costs being on industry property, as compared with 15 per cent for all switching operations, 5.75 per cent can be earned on district traffic with a ratio higher than 72 per cent, using investment as a basis of value, and higher than 76.8 per cent using the Commission's tentative value as the basis. (Tr. 278.) My analysis, after the adjustments mentioned, shows a switching district operating ratio not far from 77 per cent, which is approximately that prevailing on all switching traffic in the district. (Tr. 278.)

Page 48 shows estimated increase in annual income of switching roads in the district under suspended tariffs and resulting return upon investment, using the tentative valuations.

Page 49 shows the manner of determining estimated revenues per car, which I believe were conservatively estimated. (Tr. 278.) The exhibit shows operating income of these switching roads for the years 1925, 1926 and 1927, adjusted to include increased revenues under the suspended tariffs, would be equal to 7.29 per cent on investment and 9.55 per cent on the Commission's tentative valuation.

That finishes my statement on direct.

Chairman Campbell: It being 4:30 P. M., the hearing will now adjourn until 9:30 o'clock tomorrow morning, May 17, 1928. (Tr. 280.)

[fol. 577] On May 17, 1928, pursuant to the adjournment, the hearing reconvened at Chicago, Illinois, at 9:30 A. M. (Tr. 282.)

Mr. Davis: When I made my objection to Mr. Oliver's exhibits dealing with the tentative valuation, I also included the testimony given in connection therewith.

Chairman Campbell: That may be included, but with the same ruling. (Tr. 283.)

J. P. Haines.

Direct examination.

By Mr. Walter:

I am traffic director of the Chicago Association of Commerce. (Tr. 283.)

Dealing only with the principles believed proper to govern the making of switching rates in the Chicago district, but based upon a careful study, we will show how they affect the development of manufacturing and distribution in Chicago, and our experience under present methods, in effect for approximately seventeen years.

The Chicago Association of Commerce was organized to encourage and promote the best interests of the city in trade, industry and public good. It has a membership of 7,000, 4,000 being receivers and shippers of freight. The Chicago Shippers Conference Association, which I also represent, is composed of 463 of the largest shippers and re- [fol. 578] ceivers located in the Chicago Industrial District. The best interests of the Chicago Receivers and Shippers require free interchange of carload traffic between carriers operating within the Chicago district and a free interchange and further development of traffic between such carriers on the one hand and the Lakeline carriers operating to and from Chicago on the other. (Tr. 284.)

Switching rates should be uniform for all two and three line movements regardless of length of haul and apply alike on all commodities. (Tr. 284.) Prior to 1911, no uniformity in switching services or rates prevailed but as a result of negotiations began in 1909 between carriers and shippers, an agreement known as the Lowrey agreement was reached and submitted to the Illinois Railroad and Warehouse Commission for approval on May 2, 1910; and I offer at this time a copy of the original Lowrey Agreement. The

document was received in evidence, marked "Exhibit No. 14, Witness Haynes". (Tr. 285.)

The Illinois Manufacturers Association, the Chicago Association of Commerce and the Board of Trade of the city of Chicago, presented this exhibit to the Illinois Railroad and Warehouse Commission of Illinois, in behalf of the shipping interests of the Chicago District. The agreement provided for a uniform rate to be assessed by all carriers except for a one line haul the rate was stated as a maximum and was the same as the two line haul rate, namely, 1½ cents per 100 pounds, minimum weight 60,000 pounds per car. If three or more lines participated in the haul, the [fol. 579] charge for each intermediate carrier was not to exceed 1½ cents per 100 pounds. The rate was uniform on all commodities excluding only grain, coal and coke. (Tr. 286.) The exception as to intrastate coal and coke traffic was removed in June, 1927 and in July as to intrastate traffic. The 25 and 40% increases permitted on June 25, 1918 and August 26, 1920 respectively and the 10% reductions on July 1, 1922 are the only rate changes made since the agreement became effective. (Tr. 286.) We do not expect carriers to switch cars at less than actual cost of transportation but believe the best interests of both carriers and shippers will be furthered by uniform rates applicable on all commodities throughout the entire district via all carriers within the district, thus continuing the principles laid down in the original Lowrey agreement. Since the publication of uniform rates on August 1st, 1911, the number of industries located in the Chicago switching district has grown tremendously. In 1911, the industries having private side tracks numbered 1910 and have now increased to approximately 4,500. There are also a large number of smaller manufacturers and distributors who do not have private switch tracks; the exact number of these industries cannot be given. 35 carriers operate within the Chicago district and the industries are scattered throughout this area. Some sections have more industries than others, due in a large measure to their early location and efforts made by some of the carriers to secure new industries. (Tr. 287.) Unless a uniform basis applies throughout the district, centralization of manufacturers and distributors adjacent to the source of supply will result and cause congestion and increased cost to those sections with a loss of

traffic and depreciation of property values in other sections. (Tr. 288.) Many industries are now at points removed [fol. 580] from the congested areas. A forecast of the relocation of industries and loss of investment that would result from subdividing the district is impossible.

A large portion of the tracks of the Indiana Harbor Belt and the Belt Railway of Chicago, are outside the congested area. If switching rates are uniform an industry located at a point within the district best suited to its business, could distribute or secure its products on the same basis as any competitor within the district. (Tr. 288.)

The boundary of the district should be as designed on page two Supplement number two to C. W. Galligan's Tariff, I. C. C., No. 98, Illinois Commerce Commission No. 43, Indiana Railroad Commission No. 18. By the publication of arbitraries and eliminating certain stations from the tariff, the carriers have restricted application of the industrial rates on the North and West sides of the switching district, thus requiring the payment of rates much higher to industries located at the excepted station. (Tr. 289.) A map of the Chicago switching district showing boundaries of the district showing the excepted stations was offered and received in evidence, marked "Exhibit No. 15, Witness Haynes". (Tr. 290.) The red lines on the map show the stations having no joint switching rates. To illustrate, the industrial switching rates of 2½ cents for two line hauls apply to Mayfair on the Chicago and Northwestern Railway, but to Jefferson Park, immediately beyond, switching rates are not published and a combination of local rates or rates made by applying the intermediate rule must be assessed. (Tr. 290.) The green line indicates industries located and assessed an arbitrary of ½ cent per [fol. 581] 100 pounds in addition to the switching rates applicable to other stations within the district. The arbitrary applies on all commodities. (Tr. 290.) The distances to stations at which regular switching rates apply in many instances are greater than to stations to which the higher rates are charged. On the Chicago, Milwaukee, St. Paul and Pacific Railroad, the ½ cent arbitrary is charged at stations Mont Clare to Franklin Park inclusive, and violates Section 4 of the Interstate Commerce Act and Section 40 of the Illinois Commission law and Warehouse Act. It is brought about by interchange of traffic with the Indiana

Harbor Belt at Franklin Park, Illinois. As an example, the shipment originating on the Indiana Harbor Belt destined to an individual on the Chicago, Milwaukee, St. Paul & Pacific Railroad, at Galewood would be transferred to the latter road at Franklin Park and move thence East through River Grove and Mont Clare to Galewood. The Galewood rate is 2½ cents per 100 pounds, minimum weight 60,000 pounds per car, and to River Grove and Mont Clare, the rate is 3 cents with the same minimum weight though the shipment to Galewood passed through River Grove and Mont Clare. (Tr. 291.) To avoid this fourth section departure, the Chicago and Northwestern Railway at Proviso by tariff provision makes interchange between Indiana Harbor Belt and the former at Wood Street and the rates will not apply via Proviso though in many instances via Proviso, the distance would be less and to maintain the ½ cent arbitrary shipments are especially routed by a longer route and a more congested area. (Tr. 292.) The routing of traffic through interchange points in the down town section to avoid fourth section violations by maintaining the ½ cent arbitrary shows the advantage of and necessity for uniform rates within all points within the district. I offer in evidence an exhibit prepared to show the distances and [fol. 582] rates to each list of industries at stations located on the North West Sides of the switch district, which was received in evidence marked "Exhibit No. 16, Witness Haynes." (Tr. 292.)

On page one, I list all stations of the North and West sides of the switching district previously referred to but which do not have the general basis of switching rates. (Tr. 292.) Section one lists stations on the green line of map exhibit No. 15, to which a ½ cent per 100 pound arbitrary is added to the general basis of switching rates. Hereafter these shall be referred to as the arbitrary stations. Section two, Page one lists the stations covered by the red line on map Exhibit 15, to which joint through switching rates are not published. Page two shows distances to stations on Chicago and Northwestern in the switching district to which joint switching rates of 2½ cents per 100 pounds for two line and 3 cents per 100 pound for three line hauls, apply. The distances are from the three principal inter-change yards of that railway. Tr. 293.) Page 3 shows distances from Union Station and

from 3 interchange yards to stations on the Chicago and Northwestern Railway. Section 1, Page 3 shows distances to the arbitrary stations, the average being 10.4 miles. We excluded Proviso in reaching this average because the interchange cannot be made at Proviso. (Tr. 293.) Section 2 of Page 3 shows distances to stations having no joint through rates. The average being 13.1 miles. Had we eliminated distances from Union Station and used aver- [fol. 583] ages from 40th St., and Wood Sts., the Northwestern's two principal interchange yards, the average under section one would have been 10 miles and under section two, 14.5 miles. (Tr. 294.)

Page 4 shows distances from three principal interchange yards of the Chicago, Milwaukee, St. Paul and Pacific Ry., to stations on its line within the Northwest district. Section one of page 4 shows distances to the arbitrary stations and an average haul 7.9 miles. Section 2 of this page shows stations having no joint through switching rates and an average haul of 12.3 miles. Eliminating the distance from the Union Station, the average distance from Galewood and Bensonville yards would be 5.7 miles under section one and 14.8 miles under section two of the exhibit. Page 5 shows distance to stations on the same railroad having switching rates of 2½ cents for two lines and 3 cents for 3 lines hauls with an average haul of 7.8 miles. (Tr. 294.) On this page the average of distances shown in Sections one and two of page 4 and Section 3 are shown, the average to all stations on that line being 8.3 miles. Eliminating the distances from the Union Station the average would be 9.5 miles and the average of section 1, 2 and 3 would be 9.2 miles or less than the average to those points to which the freight switching rates apply. Pages 6 and 7 show rates and earnings per car from industries on connecting line to industries on the Chicago and Northwestern Railway of representative and moving commodities. In the first column at the left appears the names of stations to which regular switching rates do not apply. The stations prefixed by the asterisk have no joint through switch rates; their rates being made by application of the intermediate rule. The stations prefixed with a number sign are the arbitrary stations, having rates in each instance [fol. 584] of ½ cent higher than the rates to stations not so prefixed (Tr. 295.) Stations Deering to Rogers Park

are on the Milwaukee division, Maplewood to Des Plaines on the Wisconsin division, Peterson Avenue to Greenwood Blvd., on the Evanston cut-off, starting at Mayfair and ending at Central St. Page 7, Stations 40th Ave., to Proviso are on the Galena Division. Comparing the Mayfair and Jefferson Park car earnings, the distance from Mayfair to Jefferson Park is 1.1 miles. Earnings to Mayfair are $15.00 for a two line haul and to Jefferson Park, $25.20. The Jefferson Park earnings are on a 36,000 lb. car of acid, based on actual weight, but to Mayfair earnings would not increase with additional tonnage but the additional weight to Jefferson Park would produce increased earnings. On fibre board boxes, the difference between these points is $12.60 per car; iron and steel articles, $42.13 and on refined oil, $24.90 per car. (Tr. 296.) Iron and steel to Greenwood Boulevard produces $7.66 more per car than to Mayfair. The Greenwood movement involves 7 or 8 cars per day, the loading as high as 116,000 pounds for skelp, and on pipe to points in the district, approximately 76,000 pounds per car. (Tr. 297.)

Pages 8 and 9 show the same information as to common brick, soft coal, crushed stone and coke.

Pages 10 and 11 list industries located at stations shown on page 1 of this exhibit which are excluded from the application of uniform switching rates of 2½ cents for 2-line hauls and 3 cents for three-line hauls. (Tr. 297.)

Although not referred to in the original Lowry agreement, the carriers in the first Lowry tariff, I. C. C. No. 6 excluded the application of the rates on outbound or inbound lake traffic interchanged from docks or through public or private warehouses located on the waterfront, when such traffic was in transit either with or without storage [fol. 585] incidental thereto. (Tr. 297-298.) November 1, 1923, the words "that is, when such traffic is in transit (either with or without storage incidental thereto)" were eliminated. This clause excludes from application of switching rates published by C. W. Galligan, all waterborne freight in or out of Chicago. (Tr. 298.)

This restriction should be removed and switching district rates should apply to ex-lake shipments handled from public or private docks or through public or private warehouses. We requested the carriers to cancel the ex-lake exclusion clause and 19 carriers agreed to this revision,

and in Galligan's I. C. C. No. 89, Illinois Commerce Commission 37 and Indiana Railroad Commission No. 16 industrial switching rates on water-borne traffic were made to apply via those carriers. (Tr. 298.) This tariff was suspended and is now under investigation. (Tr. 298-299.) Subsequently certain of the roads, through their committees, made recommendations, through exceptions, for the application of switching district rates on outbound or inbound lake traffic interchanged through or handled over lake line docks. (Tr. 299.) The changes proposed as to lake traffic did not apply on the Chicago & North Western Railroad. (Tr. 300.) Subsequently the committee recommendations were changed and numerous carriers then asked that the original rule excluding ex-lake traffic from the application of district rates be published for their account (Tr. 300), for which, on December 17, 1927, they filed a six-section application to publish the proposed changes, which was denied by the Commission pending the general investigation.

I offer in evidence an exhibit showing rates applicable on ex-lake traffic, compared with rates applicable on ex-rail traffic. (Said exhibit was received in evidence and [fol. 586] marked "Exhibit No. 17, Witness Haines.") (Tr. 301.)

Pages 1, 2 and 3 of this exhibit show present rates on all commodities from industries having docks or warehouses located on Chicago & North Western Railway to industries located on other carriers in the Chicago district. (Tr. 301.) Column 2 shows interchange method, and where the word "Belt" is used it means a three-line haul, the Belt Railway of Chicago being the intermediate carrier. (Tr. 302.)

The Belt Railway is shown as intermediate carrier wherever possible, though interchange could have been made through the Baltimore & Ohio Chicago Terminal or the Indiana Harbor Belt. Acting as intermediate carrier, the Belt receives 1 cent per hundred pounds, but the rate of the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt is 2 cents per hundred pounds.

Columns 3 and 4 show rates and earnings on shipments not moved to the industry by boat. Shipments by rail or by motor truck may reach an industry warehouse, or commodities may be manufactured and thence shipped to industries in the district, and each is designated "ex-rail"

and moves at the rates and earnings shown in Columns 3 and 4. (Tr. 302.)

Columns 5 and 6 show rates and earnings per car on shipments handled over docks or through warehouses located on the waterfront. They are combinations of local or proportional rates of the individual carriers participating in the movement, in all instances exceeding the so-called ex-rail rates. (Tr. 302-303.)

Columns 7 and 8 show the extent of excess earnings on ex-lake traffic over other traffic, which ranged from $9.00 to $18.00 per car, though the movement is identically the same, being between the same industries. (Tr. 303.) Ex- [fol. 587] lake traffic is charged from 66.6 per cent to 100 per cent more than is ex-rail traffic. It is almost impossible, where ex-lake and ex-rail traffic are mixed in the same warehouse, to later identify or separate one from the other. There is not more handling on ex-lake business. The car is spotted for loading similar to the situation at an industry.

Pages 4, 5 and 6 show proposed rates of carriers which are now under suspension. This information is of similar character to that on pages 1, 2 and 3. Tr. 303.)

Page 7 shows exceptions to all commodity bases and applies largely to combination rates on ex-lake traffic. (Tr. 304.) These exceptions result because individual carriers naming rates to the junction, with connections, apply different rates on some one or two commodities, probably resulting from a situation peculiar to that carrier. The exceptions differ with each carrier.

Pages 8, 9 and 10 show information similar to that on previous pages, except that we used the Chicago Short Line Railway as originating carrier.

Results are, however, the same, differing only to industries on the switching roads, which differences result from publication by Chicago Short Line Railway of separate tariffs applicable to these movements, which do not contain the clause excluding ex-lake traffic from application. (Tr. 304.)

Numerous carriers have withdrawn the rule, and the Baltimore & Ohio Chicago Terminal, the Chicago & Eastern Illinois, and the Wabash have advised that they would withdraw it. (Tr. 305.) Thousands of dollars have been spent to increase the facilities for the handling of ex-lake

[fol. 588] traffic at Chicago, and continuing the rule excluding ex-lake traffic will greatly retard Chicago's development as a port and minimize the benefits resulting from the improvements of the water service and from the benefit of the waterway from Chicago to the Gulf, which will shortly be completed. (Tr. 305.)

There are industries and warehouses having dock facilities on other lines within the Chicago district. The situation shown, of the Chicago & North Western and Chicago Short Line, is representative of the other carriers. (Tr. 306.)

Cross-examination by Mr. Davis, representing respondent carriers:

The red line upon my exhibit 15 does not correspond with the original boundary covered by the first Lowrey tariff. The red line is the inner zone, but was not the boundary confined to industrial switching. It did apply to the north end when industrial switching rates were open to the entire south end, the blue line. (Tr. 307.) Since then the district has been enlarged to the outer boundary line shown on Ex. 15, with rate changes only as previously stated. It is my understanding that general order No. 28, made by the director general, authorized the increase that applied to trunk lines as well as to the belt lines. (Tr. 308.)

We desire to have a common rate-base in the entire district outlined in Ex. 15. We do not object to the different rate for a two-line haul than for a single-line haul, or for a three- or more line haul higher than a two-line or single-line haul. (Tr. 308-309.) Wherever, under present tariffs, rates in the district are not on that basis, we want them brought in line and to include all rates within the district except as to grain, which has always been an ex-[fol. 589] ception, and for which I am not authorized to speak. We want all rates higher than the present basis brought down to it, and that the basis should apply to all commodities. (Tr. 309.) We want the district rates to apply to all private sidings. (Tr. 310.) The figure I gave does not cover a building which may have 10 or 20 firms, with but one side-track serving it. The figure 4500 was taken from Mr. Galligan's Tariff 22 Series, which lists all industries with private sidings. The agreement referred to with some 19 railroads, which would remove the restric-

tion regarding ex-lake traffic, is not what has been referred to in this case as the "compromise basis." This agreement was at a different time, at a different meeting, but the rates were filed and are under suspension, and are covered in I. and S. Docket 2900. (Tr. 310-311.)

The weights shown on Ex. 16, pages 6, etc., are from the industrial minimum of 60,000 pounds, excepting iron and steel articles shown as 76,600 pounds, which happens to be the actual average loading from Greenwood Boulevard. I have not shown all commodities, but those shown are merely illustrative, but all in the illustrations are heavy-loading commodities. (Tr. 311.) The rates applied were a 60,000-pound minimum, but if the weight runs over actual weight governs. (Tr. 312.)

Page 7 of Ex. 17 is a complete list of all commodities that are not included in the Lowrey agreement, which I feel should be included, and I do not care to express an opinion as to what the level of the rates should be. (Tr. 312.) I am representing and speaking for the entire Chicago district, except as is always the case where many of our members have different views with respect to their own industries, and they always present the individual exceptions as they see best. (Tr. 313.) As to what I have said as to ex-lake rates, I speak for all shipping interests so far as [fol. 500] I know. I do not know of any interests that would take exception to that portion of my testimony. The ex-lake rates are higher than district rates, and we desire to have them the same. We think the ex-lake exceptions should be completely withdrawn, both on inbound as well as outbound lake traffic. (Tr. 313.) I speak for my organization as an organization, which is always subject to individuals therein who have different views. (Tr. 314.) I am not personally familiar with the actual service performed in connection with ex-lake traffic as compared with district traffic, and before concluding the ex-lake rate on coal should be reduced to the district rate, no investigation was made to determine the effect it might have on the movement of coal from Illinois and Indiana to the Chicago switching district, other than the general effect it would have on road-haul movements of all commodities. (Tr. 314-315.) We did have the matter up through the Chicago Coal Association, but on account of different views they decided not to take any action. As far as individual oper-

ators were concerned, there was one outstanding operator and member of our transportation committee, who had no objection. Some coal moves via some lines on the industrial switching rate today. (Tr. 315.)

I am not speaking for the stone industry. (Tr. 316.) I stated that I was not speaking for the grain trade, and any views expressed as to the level of rates and uniformity of them does not apply to grain. Of course grain is such a competitive commodity as related to other markets that that alone occasioned its exception from the original Lowry agreement. As to what the situation is today I do not care to express a view. (Tr. 316.) As early as May 2, 1910, the Association of Commerce took the position that [fol. 591] grain should not be included in the agreement, and it has not changed since then. (Tr. 317.)

Redirect examination.

By Mr. Walter:

It is not to be understood that I oppose the continuation of the present rates on low grade commodities like slag, manure, waste materials and low grade raw materials. (Tr. 317-318.) Each commodity will have to be considered separately on its own merits if there is a condition peculiar to it that justifies a basis lower than the maximum. (Tr. 318.)

George W. Oliver, recalled:

I do not agree with the Saur-Colverston formula in allocating cost of an empty movement to the district switching service where a loaded road haul immediately precedes it. (Tr. 320-321.) In my judgment, the return of the empty is properly chargeable to the prior road haul movement. (Tr. 321.) All that should be charged to empty movement cost would result from the movement between the base yard and the industry. In my judgment, we will have to go much deeper into the assignment of these empty hauls than the carriers have done. (Tr. 322.)

Cross-examination by Mr. Connell, representing respondents:

Referring to illustration, page 29 of Exhibit 13, of where a car was loaded at the elevator of the Armour Grain Com-

pany and given to the Indiana Harbor Belt for delivery to the American Maize Products Co., which, after unloading, was delivered to the Home Road of the Chicago, Burlington & Quincy Railroad at La Grange. Assuming, in answer to your question, that the car came in the road haul service, routed Chicago, Burlington & Quincy, Belt Railway, and was delivered at the Armour elevator by the Belt and was [fol. 592] then switched by the Northwestern and routed out by the Indiana Harbor Belt in the switching district movement and the latter road then delivers the empty to the Chicago, Burlington & Quincy Railroad at La Grange, it makes a different situation. The Indiana Harbor Belt would have to pay per diem on those cars and it is up to it to get cars off its line and return to the owning road as quickly as possible and in such situation it would be proper to charge switching district movement with the cost of return of the empties to the home road. If all roads were considered as a system, this empty movement would properly be chargeable to the prior loaded movement. (Tr. 324-325.) There would still be some question as to whether or not it is proper to view these railroads as a system and if the case as assumed by you is treated by itself as between the Indiana Harbor Belt and the Burlington, the former would have no way of getting the cost of the empty return except from the shipper, but by performing this return service, the Indiana Harbor Belt relieves other railroads participating in the road haul movement of a certain amount of cost and it would seem, viewed from a system viewpoint, to be some argument for not assessing all this return movement against the switching movement traffic. (Tr. 326.) The Indiana Harbor Belt could not get anything out of the line that brought this car to the Armour Grain Company elevator. (Tr. 326.)

Redirect examination.

By Mr. Walter:

The great bulk of cars handled in the Chicago switching district come in under load and go out under load and the switching movement might be regarded as intermediate service to other road hauls.

[fol. 593] Recross-examination:

I do not know to what extent the cars covered by my exhibit No. 13 were routed by the shippers. (Tr. 327.)

The longer routes are available to shippers and the carriers solicited business over them. That is only one phase of the out of line hauls covered by my exhibit. There are loads where the railroad clearly elects to perform an out of line haul. (Tr. 328-331.) The law requires the carriers to observe the routing given by the shipper and I understand that in the movement illustrated on page 19 of Exhibit 13, the Standard Oil Company routed the shipments from its plant at Whiting to the Sherwin Williams Co., at South Chicago, via the Baltimore & Ohio, Chicago Terminal and the Belt Railway of Chicago. (Tr. 328-331.) I had supposed the formula contained more information as to determining the number of days of car detention than is recited on page 19 of the formula, but it has been a long time since I examined the formula. On page 51, under instructions, is the statement "Terminal detention begins when cars are assigned for loading in road freight trains or when received from connecting lines in switch or road service," which gives quite a bit of latitude to the assignment. The term "when cars are assigned" to particular service seems to me to be quite indefinite. (Tr. 332-333.)

Mr. W. J. Hammond

Am traffic manager of the Inland Steel Company and acted as chairman of the advisory committee of the Chicago Shippers Conference Association, which organized the Chicago Switching interests by commodity groups as far as possible. The Inland Steel Company is a Delaware Corporation, with its principal office in Chicago, owning [fol. 594] plants at Chicago Heights, Indiana Harbor, Chicago, and Milwaukee, Wisconsin; Chicago Heights is located on the Chicago and Eastern Illinois, Michigan Central, Baltimore & Ohio, Chicago Terminal, Chicago, Milwaukee, St. Paul & Pacific and Elgin, Joliet & Eastern Railway, 31/2 miles outside the Chicago switching district, but has always enjoyed the same or lower rates to and from the Chicago switching district. (Tr. 334-335.) The Chicago Heights Terminal & Transfer Railway Co. serves the Chicago Heights plant exclusively and performs prac-

tically all switching service for industries located at Chicago Heights. (Tr. 335.) The Chicago Heights plant has operated since 1893 and produces small angles, bars, agriculture implement shapes, special sections and fence posts, which are shipped principally to the Chicago Switching District and points in the South and Southwest. (Tr. 335.) Our Indiana Harbor plant is located on Lake Michigan, about four miles East of Chicago corporate limits and was the first plant located at Indiana Harbor which was the first port established in Indiana on the West side of Lake Michigan. From a small beginning in 1902 with a limited range of commodities, this plant now operates blast furnaces, coke ovens, open hearth furnaces, and produces the entire list of iron and steel articles except wire, nails, tin plate and pipe. (Tr. 336.) The Indiana Harbor Belt & New York Central railroads serve the Indiana Harbor plant; the former handling all the products which are shipped principally to the Chicago district and points in the West and Southwest. (Tr. 336.) Iron ore, coal, oil, acid, limestone, scrap iron, brick, machinery and various alloys are required in large quantities in the production of steel and carriers receive revenue on all these raw materials, a large share of which originates in the Chicago district. These commodities are largely sold on a basis that reflects the transportation cost in the purchase price. (Tr. 337.)

[fol. 595] In 1927, 13,633 cars of raw material originating in the Chicago district were used at the Indiana Harbor plant, with an average weight of 94,888 pounds, $22.66 average per car revenue, total revenue $308,913.71. (Tr. 337.) During 1927, 13,011 cars, principally steel, were shipped from this plant to points in the Chicago switching district; average per car weight, 82,201 pounds, average revenue $20.99, total revenue, $273,172.20. If the proposed increased rates applied to that volume of traffic would produce total revenue for the inbound and outbound movement in 1927, $803,586.13; an increase of $221,500.22, or 38% increase in the total revenue for this service. (Tr. 337.) We sell our products in the Chicago switching district on a delivered basis. We pay the freight charges and any increase therein must be absorbed in the delivered price and cannot be passed to the customers in the switching district. Our company competes with steel mills located in the Chicago switching district at Gary, Indiana

and with mills located in Central Freight Association territory and at St. Louis, Missouri. A 36,000 pound minimum applies on shipments from Central Freight Association territory to Chicago, while shipments moving within the Chicago district require 60,000 pounds minimum. (Tr. 338.) The Indiana Harbor plant is served from the Michigan Avenue yard of the Indiana Harbor Belt and movements between that yard and plant in number of cars are limited by locomotive capacity which affords maximum revenue with minimum service. (Tr. 338.) Frequently the same locomotives handling cars for the Inland Steel Company also in the same trains handle cars to or from the Youngstown Sheet & Tube Co., the Elgin, Joliet & Eastern Road and occasionally, the Baltimore & Ohio [fol. 596] Railroad. (Tr. 339.) Our outbound shipments are classified at our plant tracks and the cars moving through Gibson are handled direct to that station without classification at Michigan Avenue. (Tr. 339.) During Winter months, on account of large volume of inbound coal, deliveries are frequently handled direct at Gibson without classification at Michigan Avenue. Coal from the Baltimore & Ohio and New York Central Railroads is frequently delivered at our Indiana Harbor plant by direct road crews in train loads, and the empty coal cars are returned in the same manner. (Tr. 339.) Our company maintains all tracks, scales, round house and repair shops within its plant, including locomotives, cars, etc., valued at $2,562,000, not including land value or tunnels connecting respective plants. (Tr. 339.) The initial switching from steel plants to industries in Chicago switching district is not always the final movement; approximately 65% of these commodities are further manufactured and forwarded in road haul movement from which the railroads receive their principal revenue which, in their interests, as well as that of shippers, justifies a low switching rate which develops traffic for subsequent road haul movement. (Tr. 340.) The improved highways permit expeditious movement of large volume of tonnage by trucks at low cost. Any switching rate increase will cause diversion of an additional volume of traffic to the highways, moving direct to destination without rehandling, with corresponding loss of revenue to the carriers. (Tr. 340.) I have prepared exhibits showing rates for various industrial centers for one, two and three line hauls. It shows maximum and minimum

rates with proper tariff authority, for offer in evidence which was received, marked "Exhibit 18, witness Hammond." (Tr. 340.) Generally the rates mentioned move switching traffic, but at Pittsburg, the switching rates are [fol. 597] not all commodity rates but have different rates for different commodities. Where ton rates are shown, the rate applies either on gross or net tons as the commodities are rated under official classifications or exception thereto. The Inland Steel shipment data presented here by Mr. Oliver, was furnished through my office. It was obtained from our car records and is correct. (Tr. 341.) The movement from Chicago Heights to Chicago has never been treated as a line haul movement. The rates have always been held on the Chicago level or are lower, although Chicago Heights is not included within the Chicago District. We ask a continuance of the same level of rates which we have always enjoyed from that point, that is, the Chicago rates. (Tr. 342.) In a general way I am familiar with the commission's decision in the Jones & Laughlin case which prescribed 6c for the first 10 mile block, the rate applying from points contiguous to Chicago Heights in to Chicago. From a competitive standpoint, it seemed desirable to give Chicago Heights lower rates for the Chicago district than applies from the contiguous points. Chicago Heights was developed practically upon the basis that exists within the district. The movement from Chicago Heights to the Chicago district is considered a switching movement. (Tr. 343.)

H. H. Bascom was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am assistant traffic manager Youngstown Sheet & Tube Company, Chicago, Illinois, which is an Ohio corporation with main office at Youngstown, with Chicago district plants located as follows: (Tr. 344.) Indiana Harbor, works including steel mill, coke plant and tin mill; Iroquois plant, South Chicago; and Evanston plant at Greenwood [fol. 598] Boulevard on the Chicago & North Western Railway. We located at Indiana Harbor because the

Lowrey agreement gave the benefit of Chicago rates in all directions, and proper rates for business within the Chicago switching district. (Tr. 345.) Producing one ton of steel requires approximately 7 tons of raw material, including ore, coal, oil, acid, limestone, scrap iron, brick, machinery, etc. (Tr. 346.) A rail haul is required on all the raw materials except some limestone, which comes by boat. Quite a large amount of raw materials, such as scrap iron, stone, brick, machinery, oil, etc., originates in the Chicago district.

At Indiana Harbor we have 30 miles of track costing $380,000, track scales about $56,000, and 13 locomotives representing more than $230,000. (Tr. 346.)

At South Chicago we have, in 13 miles of track, an investment of $270,000; track scales over $15,000.

The track investment at Evanston is over $3,000; track scales $9,000; 1 locomotive at $5500.

Total investment in Chicago district, over $60,000,000.

Our Indiana Harbor plant is adjacent to that of the Inland Steel Company, with operating conditions very similar, and to avoid duplication I subscribe to what Mr. Hammond has already said. (Tr. 346.)

We move skelp from Indiana Harbor to the Evanston plant. The district rates should apply on that haul. It is raw material manufactured at Evanston as pipe, about 80,000 tons per year, moving out in carloads of an average weight of 58 net tons. The present rate of 2½ cents and the North Western's arbitrary of ½ cent added, produces $35.40 per car revenue, or about 63.9 cents per car mile, or 1.1 cent per ton mile. (Tr. 347.) The scrap from this production is all shipped to our Indiana Harbor plant for [fol. 599] resmelting, and the manufactured pipe shipped into the district pays the added revenue into the switching district. The proposed increases, if allowed, would subject the Evanston plant to a double increase, one on inbound raw material and one on outbound product. (Tr. 347.) These increased rates may require the closing of the pipe mill at Evanston and the removal of the pipe machinery to Indiana Harbor, which would eliminate all the increase on raw material movement. (Tr. 348.)

The railroad cost studies indicate per car cost of $11.92 from Indiana Harbor to Evanston. Our present rate produces $35.40 per car, moving in lots of 5 or 6 at a time.

(Tr. 348.) The North Western cost study indicates, on skelp movement to Evanston, a classification at Weber. If classification were at 40th Street, the one at Weber would be unnecessary. (Tr. 348.) At our Evanston plant the North Western merely delivers inbound cars and takes outbound cars from their tracks at our plant, and it has practically no switching cost, as our engine performs all plant switching, for which we receive no compensation. (Tr. 349.)

We have a coal movement by boat which we transfer from the steel plant to the coke plant, at a $4.95 per car basis, in cuts of approximately 20 cars at a time. The charge is merely the transportation from one plant to the other, as we do the spotting at both ends, and applies when loaded in our own equipment. In railroad equipment we pay $9.95 per car.

If the increases proposed were granted, we would have to build a conveyor to handle this coke and coal, or would move other materials by truck, so that the railroads would lose the revenue on that business.

The $11.00 shown in the cost study is exclusive of clerical cost and car detention. (Tr. 349.) Our engine-hour cost [fol. 600] at Evanston is $3.50. (Tr. 350.) In the carriers' cost figures they show $1.85 industrial switch cost at our Indiana Harbor plant, which is the terminal allowance paid by the Elgin, Joliet & Eastern or by the Indiana Harbor Belt, but the average cost at our plant for the past three years has been $2.45 per car. Our coal for interplant switching, on which we pay $9.95 per car, is approximately 70 tons per car.

Cross-examination.

By Mr. Davis:

Skelp which we move from Indiana Harbor to our Evanston plant (Tr. 350) is a piece of steel about 19 feet long and a little more than 9 inches wide, and involves a 2-carrier movement, the Indiana Harbor Belt and the Chicago & North Western Railway. (Tr. 351.) The rate we pay is the regular 2½ cent switching district rate, plus the North Western's arbitrary of ½ cent, which applied to an average loading of 116,000 pounds per car gives $35.40 car revenue. (Tr. 352.) Out of that revenue we get an al-

lowance for switching of $1.83 in Indiana Harbor, which actually costs us $2.45. The 116,000 pound loading average is taken from the total skelp shipments to Evanston during 1926.

Our pipe shipment loads into the district average about 38 tons, because we have to meet the outside competition mentioned by Mr. Hammond that moves on a 36,000 pound minimum. (Tr. 352.) The coal handled at the plant moves about a mile. (Tr. 353.) A viaduct over the Elgin, Joliet & Eastern, the New York Central, the Baltimore & Ohio and the Indiana Harbor would make the distance approximately a half block from one plant to the other. (Tr. 353.)

Our $3.50 engine-hour cost at Greenwood applies to what is called a "teakettle" engine. It does not look like a real [fol. 601] engine, but it does the work. The Indiana Harbor Belt could use that type at an industry similar to ours at Greenwood Boulevard. (Tr. 353.) Ours is a standard-gauge locomotive, having four wheels under the engine. (Tr. 354.) It is what is termed a "camel-back" engine. (Tr. 355.) Three men operate it, switchman, engineer and fireman. (Tr. 355.) I think we pay union wages. (Tr. 356.) The crew works from 7 A. M. to 5 P. M., with an hour at noon for luncheon.

The coal movement which I said might move by truck is between our steel plant and our coke plant at Indiana Harbor. One plant is on the lake and the other is across the tracks of the Elgin, Joliet & Eastern, the New York Central, the Baltimore & Ohio and the Indiana Harbor Belt Railroad. (Tr. 356.) We would not move this coal by truck, but I said we would have to build a conveyor if these increased rates were allowed. (Tr. 357.)

The trucking movement referred to handling sheet bars by truck to the tin mill, which is just south of the coke plant. (Tr. 357.)

R. C. Livingston was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager, Interstate Iron & Steel Company. (Tr. 357.) The Interstate Iron & Steel Company is an

Illinois corporation operating three plants in the Chicago district; one at South Chicago, manufacturing steel ingots, blooms, billets, bars and shapes; second, a rolling mill at East Chicago, Indiana, manufacturing iron and steel bars, [fol. 602] shapes and railroad tie plates; and a wire plant at Grand Crossing, Illinois, manufacturing wire rods, wire, wire products and tacks. (Tr. 358.) To secure these industries carriers provided low switching rates, from $3.00 to $6.00 per car, as an inducement to locate on their tracks, and in some cases written contracts provided that they should be permanent. (Tr. 358.)

In 1910 the industrial switching rates in the district were advanced to 1½ cents per 100 pounds, minimum 60,000 pounds, or $9.00 per car. (Tr. 359.) The 1½ cent rate was advanced 33⅓ per cent in 1918, by General Order No. 28, and 50 per cent in 1920 under Ex Parte No. 74. General Order 28 authorized a 25 per cent increase and Ex Parte 74 a 40 per cent. In disposing of fractions the actual increases were 33⅓ per cent and 50 per cent respectively. In 1922 the Commission reduced the rates to the present basis of 2½ cents per hundred pounds, minimum 60,000 pounds, for one- or two-line hauls. (Tr. 359.) The increased size of cars and locomotives on the switching lines has enabled those roads to handle full train loads of heavily loaded cars at a cost of service little, if any, greater than it was in 1910. (Tr. 359.)

The agitation for increased switching rates has always come from two or three lines serving the northwest portion of the Chicago district, which has practically no great industries, and the northwestern lines do not have opportunity to handle switching business in heavy volume. (Tr. 360.) These lines are not really representative switching lines. To illustrate, the Chicago & North Western serves 382 industries in the Chicago district, which are relatively small concerns, such as coal yards, lumber yards, pickle and candy factories, soap and varnish works; while the Indiana Harbor Belt serves 422 industries, many of which are huge steel, cement, oil, car building and chemical plants at which hundreds of cars are switched every day. (Tr. [fol. 603] 360.)

Present Chicago district switching rates are as high or higher than for corresponding service in other large cities, as shown by Hammond's Ex. 18. (Tr. 361.) We had sev-

eral boatload shipments totaling 700 cars switched from our South Chicago plant to the docks at 95th Street and the Calumet River, a distance of 9 miles. (Tr. 361.) Our company made a shipment of the same number of cars from docks at Detroit to plants of the Ford Motor Company and the Detroit Steel Products Company, an average distance of 10.6 miles. (Tr. 361-362.) We shipped the cars by boat to Detroit, and there they moved via Michigan Central to Detroit Terminal and several other routes. (Tr. 362.) There were different routes. (Tr. 363.) On some cars the charge was $24.00, on others $16.00, and on others $18.75. These shipments were sales to be made to the Ford Motor Company, which were moved by rail to the dock here and by boat to Detroit and thence by rail from the dock at Detroit to the Ford Motor Company. (Tr. 363.) In each instance a two-line haul was involved. The average Chicago charge was 56 cents per net ton against an average net-ton charge for the same service at Detroit of 40 cents. The Detroit rates were fixed by the Commission after extended hearings. (Tr. 363.)

In order to ship this material by boat it was necessary to deliver it to our customers in exactly the same form it would be delivered had it moved by all rail. (Tr. 364.) Every bundle was marked and unloaded car for car, so that each car that moved from the dock at Detroit was identical with the car that was loaded at our plant and taken to the docks here. (Tr. 364.) The switching tariffs at Detroit show charges from dock to the industry, and [fol. 604] they contain distance tables and maps from which distances may be ascertained, and that is what I did; but if you mean whether I went over there and walked over the tracks at Detroit, I did not. (Tr. 365.) I know how the cars were actually handled, because I had to O. K. the switching bills.

Switching cars between industries served by private sidetracks have always been on an entirely different basis than line-haul rates, because shipper and consignee furnish terminal facilities. (Tr. 365.) But in many instances line-haul carriers must furnish team tracks for loading and unloading, the chief excuse for high switching rates. (Tr. 366.) Usually the line-haul rates include the switching charges at both ends.

The Jones & Laughlin decision affects line-haul rates to and from Pittsburgh, Cleveland, Indianapolis and St. Louis, and if that scale is to measure switching rates in Chicago district we insist that basis be applied to all other cities in the territory mentioned. (Tr. 366.)

The carriers admit, and the Commission intimates, in the Jones & Laughlin case, that steel is paying more than its share of transportation costs, because it moves largely in open-type cars, it is not subject to loss by theft, damage or weather, needs no icing or heating in transit, loads heavier than almost any other commodity, and for these reasons steel rates should be reduced rather than increased. The custom of Chicago manufacturers for years is to quote steel prices f. o. b. customer's plant, Chicago. (Tr. 366.) The manufacturer thus absorbs the switching charge, which is especially necessary since the abolition of the Pittsburgh base. (Tr. 367.) The line-haul carriers [fol. 605] absorb the switching charges of our competitors located outside the district. Increased switching charge for the Chicago district will change the relationship.

The claimed congestion in the Chicago switching district is not supported by facts. Our Ex. 19 shows movements of 100 cars, 20 to each of 5 different customers, with average detention of 4.7 days from time empty cars were set for loading until their release. Demurrage rules permit 2 days' free time for unloading and 2 days' for loading, which shows the shipments mentioned were handled very promptly. (Said exhibit 19 offered and received in evidence and marked "Ex. No. 19, Witness Livingston.") (Tr. 367.)

The first sheet of the exhibit shows 20 cars moved to C. & G. Spring & Bumper Company, 38th and Laughlin Streets, routed for Indiana Harbor and Chicago Junction. (Tr. 368.) The average days' detention was 3.76. Other sheets show similar illustrations. At the bottom is shown the grand average. Average detention on 100 cars switching from three different plants to five different consignees was 4.77 days.

While some cars in the Chicago district move considerable distances, which is urged as a reason for rate increases, it may be said that distance is but one factor in fixing a proper rate, and is not the controlling factor. (Tr. 368.) The bulk of our business of finished steel articles

from our three plants during March, 1926, moving to destinations within the Chicago district, moved to the downtown district via Indiana Harbor, a distance of 35 miles via that line. (Tr. 369.) Via the Pennsylvania, the same destination, the distance is 16 miles, but based on experience we know the Indiana Harbor Belt moves the cars quicker and more cheaply than the Pennsylvania; as the [fol. 606] former handles full train loads through open country, systematized by divisions, while the Pennsylvania handles in short drags, because its route is through numerous congested freight yards for practically the entire distance. (Tr. 369.) Notwithstanding this the Pennsylvania gives us good service, though in this particular instance the cars seemed to have been hung up in the downtown yards. (Tr. 369.)

It is the general opinion that finished products moving from mill or warehouse to customers' plants constitute the principal business moving under switching rates in the Chicago district. (Tr. 370.) This may be true of many industries, but it does not apply to the steel industry because of the enormous tonnage of raw and semi-finished materials necessary to steel production. Two or three cars of inbound raw materials are required for each car of finished product, and although the inbound material pays slightly lower rates than for switching finished steel, it moves in rather large lots and for short distances only, thus producing a very great revenue. (Tr. 370.)

Much of our raw material originates in the Chicago district, running from 270,000 to 300,000 tons per year, consisting of pig iron, 150,000 tons; billets, 70,000 tons; and scrap iron, 60,000 tons; ingot molds, etc., 10,000 tons; The proposed increases on these commodities would increase our switching charges nearly $150,000 annually. (Tr. 370:) The present Lowrey arrangement for the Chicago switching district should be retained, with exceptions to the Lowrey basis to take care of interplant movement of raw and semi-finished materials. (Tr. 371.) These exceptions have been maintained for many years. Unless continued, our company would be obliged to relocate its plants or use other than railroad switching for its plant-to-plant tonnage. Similar exceptions prevail at Detroit, where switch-
[fol. 607] ing rates were fixed by the Commission. (See Michigan Central Tariff I. C. C. No. 5724, page 36.) (Tr.

371.) We get most of our pig iron in lots of 6 to 12 cars per day for our South Chicago plant from the Federal Furnace, 10 city blocks away. The cars average 50 tons or more, with earnings from $20.00 to $25.00 at present rates, and on the movement the carrier earns about $200.00 in 15 minutes' time on an Illinois intra-state movement. (Tr. 371.)

The portion of the cost study of the Indiana Harbor Belt routes 188 and 884 indicates $5.72 per car for this movement, compared with switching cost of $11.41 on all one-line cars. (Tr. 371.) In neither case is included clerical cost or cost of car repairs. (Tr. 372.) We handled about 1500 cars per month during the year 1927 at the South Chicago plant, and paid nearly $600.00 to the railroads for cars damaged by us. That amount covered all cars billed to us for damage.

Line-haul rate, Chicago to DeKalb, on paint and rosin in carloads is 5 cents per hundred, minimum weight 30,000 pounds, revenue $15.00 for hauling inflammable articles of high value a distance of 58 miles. (Tr. 372.)

The rates on stoves, including gas ranges or heaters, Aurora to Chicago, 6 cents per hundred pounds, minimum weight 30,000 pounds, or $18.00 per car revenue for hauling a valuable commodity liable to damage in transit, which must be carried in costly box cars, a distance of 42 miles. (Tr. 373.)

On these commodities line-haul carriers absorb Chicago district charges to the extent of $12.00 per car; if the Belt is used intermediate, to the extent of $18.30, subject to a minimum charge of $19.00 per car. There are a large number of line-haul rates equally low, but the above illustrate the situation. These rates are found in Chicago & North [fol. 608] Western Tariff I. C. C. No. 9647. (Tr. 373.) We can get all our pig iron from Federal Furnace. All land between Federal Furnace and our plant is owned by the two industries. If the carriers raise these rates, they will lose the business because we will build a track and haul the material ourselves. Both plants own docks on the Calumet river and the movement could be by barge. (Tr. 373.) Increased rates might force us to move our Grand Crossing plant and possibly the East Chicago plant to our steel plant at South Chicago. Other industries would no doubt make similar changes. (Tr. 374.) If proposed ad-

vanced rates are applied to all commodities, the carriers will lose a tremendous tonnage of very remunerative business. This tonnage has been eagerly solicited as it is highly competitive traffic in the Chicago district and is one of the reasons why the carriers, as stated by Mr. Galligan, have been agreeable to the continuation of these exceptions to the Lowrey basis, subject to a minimum of 100,000 pounds. We often load into 3 cars of 70 tons each, 420,000 pounds of material which would ordinarily be handled in 7 cars of 60,000 pounds. (Tr. 374.) Our business, as well as that of other producers and consumers in the Chicago District, has been built up on the Chicago arrangement, with relative high rates as compared with other localities. Shippers and carriers have alike profited by it and in my judgment, the common sense thing to do is let well enough alone. (Tr. 375.) The great bulk of our outbound tonnage is loaded into cars which we have emptied ourselves. We receive considerable more than we ship so we have no trouble about getting cars. It is unnecessary to move empty cars to supply us to any extent except to the extent that our inbound loads exceed our outbound movement. (Tr. 375.)

[fol. 609] Cross-examination by Mr. Davis, representing respondents:

I said there was no necessity for increased switching rates as far as the South and East parts of the Chicago districts were concerned, that the carriers serving the North and West parts, the Chicago Northwestern & Milwaukee, were the ones feeling the lack of money. My closing statement was that they should let well enough alone and I meant that we should have no increase at all as far as our business is concerned. I did not say that it would not help the Chicago, Northwestern or the Milwaukee. It might be better for them to leave the situation as it is. (Tr. 376.) If I was speaking only for myself and my own plants, I would not object to a zoning system which would give the Chicago, Northwestern & Milwaukee where their industries are small, a higher rate as compared with ours. We must consider all our customers throughout the district and their interests and zoning might be bad for them. Speaking individually that would be one solution, but looking at it as a whole, it would not be. I did not say that because

the industries served by the Chicago & Northwestern were small and ours large that we should be given a lower rate. (Tr. 377.) I meant all of the industries down in the Calumet district. And by reason of the heavy volume of business, the carriers handle down there, their costs are very much reduced. It might be reasonable to charge the industries that have only a small volume of business a higher rate than the industries that have a larger volume. (Tr. 378.) On Exhibit 19, a car shown as placed on August 31 and released on September 4, with detention of four days, I think I would count the day it was placed for routing. This covers 1926 business and was taken from our records. It shows car placed for loading at our plant August 31, [fol. 610] released on September 1st and moved to our customer; placed at his plant September 3, and after unloading was released on September 4th, that would count only one of the days used in loading and unloading. The time would depend whether it was placed after 7 A. M. or before 7 A. M., as to a charge for demurrage. Possibly an additional day should be added to each column but even so, it should be a very good record. (Tr. 379.) The record indicates that the Indiana Harbor Belt and Chicago Junction handling the shipment had the car in their possession so far as road haul is concerned; but two days. (Tr. 380-381.)

Cross-examination.

By Mr. Connell:

We load a large percentage of the cars received under load at our plants which between the loading and the unloading require movement from one plant to the other. We do not load them on the track where they were unloaded. (Tr. 381.) My statement was to the effect that the Indiana Harbor Belt switching cost was no greater today than in 1910. My knowledge of service costs on that road in that year is only in a general way. My statement was that the enormous increase in the size of cars and the hauling power of locomotives and in the loading were reasons indicating rate reduction in cost. The cars cost more now than in 1910, as well as locomotives and wages are somewhat higher. (Tr. 382.) It is impossible for me to say what percentage of our tonnage is interstate. (Tr. 382.) The

movement from the South Chicago plant to the East Chicago plant is interstate, but I would say the greater proportion of it would be Illinois intra-state traffic because we have a plant at Grand Crossing, the raw material for which is billets, and is switched generally from our plant at South Chicago where we manufacture the billets. Some billets we get from the Illinois Steel Co., at South Chicago and others from the Youngstown Sheet & Tube Co. (Tr. 383.) [fol. 611] Regardless of the time cars were placed for loading whether at 7. A. M., or later, and basing the time as shown in the last column as from noon to noon, it would give the number of days detained. It was a 50 50 proposition. (Tr. 384.) They do not figure demurrage from noon of one day to noon of the next day if placed after 7 A. M., of one day, demurrage does not begin until 7 A. M., of the next day. We move car load shipments of iron and steel all through the Chicago district. We produce the same articles as the Inland Steel Co., except in addition, we produce wire rods, wire, wire products and tacks. (Tr. 385.) In exhibit 19, I only pick out 20 cars that moved in 1926 between the points shown. (Tr. 386.)

J. T. Forest was duly sworn and testified as follows:

Direct examination:

I am assistant to the President of By-Products Coke Corporation of Chicago, which since 1925, has operated by-product coke ovens and blast furnaces; the largest commercial plant in the country. It is at South Chicago. We operate a coke oven plant located on the Chicago Short Line Railway, with the capacity to carbonize more than 1,500,000 tons of coal per year, producing about 1,250,000 tons of coke. (Tr. 387.) We have a blast furnace plant at South Chicago but on the opposite side of the Calumet river from the coke plant. The blast furnace is on the Indiana Harbor Belt and Pennsylvania Railroads and its capacity is from 400,000 to 450,000 tons of pig iron per year. (Tr. 388.) We have our own yards, tracks, scales and other traffic handling facilities at the coke plant, but do not do our own switching. Chicago Short Line Railway places and removes cars from that plant and shows

in its cost studies $2.00 per car cost. In that plant we [fol. 612] have 15.4 miles of track, including two track scales, costing with equipment, $440,971.43. We have yard tracks at the blast furnaces, formerly owned by Federal Furnace Co., and maintain our own locomotives. We acquired the assets of the Federal Furnace Co., in 1915 and do not have exact cost of the 8.4 miles of track at that plant. Making an estimate based on cost of a small amount of track put in by ourselves, the cost would be $72,432.22 which does not include special cost of high lines of which we have rather important ones, at that plant, nor does it include the real estate in either case. The value of the real estate in our coke plant before the Internal Revenue Department was shown to be about $15,000 per acre and at the furnace plant about $11,000. None of this has been allocated to yard tracks. We maintain three locomotives at the furnace plant referred to yesterday by Mr. Oliver, which cost $29,332.00. The railroads allow us $1.69 per car for spotting, based upon 1916 costs but allow nothing for capital investment or depreciation on trackage. Our locomotives perform our yard switching and deliver the cars to interchange tracks outside our plant operated jointly by the Pennsylvania, and the Indiana Harbor Railways. Our business is highly competitive. (Tr. 389.) As to pig iron, we have competitors from two sources having an advantage over us at the present time. (Tr. 390.) The furnaces in the Birmingham Alabama district have pig iron rates to Chicago and Northern Illinois on a lower basis than the general level of our pig iron rates outbound. Little pig iron reaches Chicago all rail on these rates but a good deal reaches the territory north of the center of Illinois and West of the Mississippi river with which we compete. Barge and rail rates from some Alabama furnaces present still stronger competition even into the city of Chicago. [fol. 613] (Tr. 390.) Cleveland and Buffalo dump their surplus iron here when their surplus is available, through steel plants, which is not a regular part of the business of these competitors. A substantial tonnage comes in by boat on rather low rates and is a very disturbing factor in our business. Some of this iron has moved by boat already this season. We likewise suffer competition from depressed coke rates into Chicago and Northern Illinois from Alabama, Chattanooga, Tenn., Midland, Penn., Weirdon, Va.,

Terre Haute and Indianapolis, Ind., and Granite City, Illinois. We have competition from other points on rates about the level of ours. (Tr. 39[illegible].) The competition from the more distant coke points is chiefly a dumping business. It costs us upwards of $10,000 per month in advertising to develop the coke business we have in the city of Chicago. This excludes coke sales for metallurgical purposes which are handled by direct contact between sales agents and customers. Outside coke coming here does nothing to develop business and therefore the competition is hard at times. The competitive situation mentioned brings out the relationship between inbound rates on these commodities and the switching rates which we must pay. There is no fixed relation between line haul and switching rates but considering competition an increase in switching rates within the Chicago district is equivalent to giving a reduction in line haul rates from outside competing points into the district. (Tr. 391.) Most of our coke business is within the Chicago switching district, as well as a very large proportion of our pig iron business and while unable to state the exact percentage, my belief is that 90% of this business moves intra-state in Illinois. We have very good business over the Indiana line within the switching district. (Tr. 392.) We bill coke, pig iron and other products primarily as requested by customers and secondarily as [fol. 614] solicited by carriers with reference to the kind of service rendered. Shipping clerks naturally pay no attention to railroad costs. Unless complaint of delays in transit or other inconveniences is made by our customers, no particular attention is given to the route followed. (Tr. 392.) A good railroad solicitor may get some business, although his road may be circuitous. (Tr. 392.) We would study a mileage basis very carefully. We are interested in rates and in the service and not in railroad costs except as they are brought up in a case like this. In a circuitous movement that causes delay, we correct the route and get more direct services. Within these limits if is immaterial to us as anyone else until rate cases come up whether the roads haul our commodities 50 miles or 10. There are cases where roads have hauled our commodities 50 miles when even 10 miles or less would have done the work. I have prepared statements regarding tonnages

and cars for the year 1926 by months; four in number. (Tr. 393.) Exhibit covers all car load shipments of pig iron from the Federal Furnace plant during 1926. Exhibit 21 shows miscellaneous car load shipments from the Federal Furnace plant. 22 covers all shipments from the coke plant and 23 covers tracing of certain movements from the plant. (Tr. 394.) The document marked "Exhibit 20, Witness Forrest," was received in evidence. It appears from the exhibit that shipments of pig iron from September make a fair average of shipments for the year; 545 moved in September and the yearly average was 524. Out of a total of 6,290, 2,424 moved within the Chicago switching district and 3,865 moved out of the district. 38.18% of the movement was within and 61.82% was outside of the district. 788 cars were single line shipments on the Indiana Harbor Belt, 910 on the Pennsylvania, and 718 were two line hauls and only 8 were three line hauls. In dividing the movement by line hauls, the September shipments on the average come [fol. 615] close to the monthly average for the year. (Tr. 395.) 1926 was a fair year but not our biggest one. In addition to our shipments representing railroad movements, we shipped hot metal which moves entirely by our own locomotives over our own tracks, which movement has been excluded in the course of this discussion. (Tr. 396.) For the year 1926, the average load was 46.5 gross tons per car or 52.5 net tons per car. On the Indiana Harbor Belt and Pennsylvania railroads for deliveries in the Calumet District, the rate is 40c per gross ton. On other lines to points within the Calumet districts, the rate is 50c. Outside the Calumet district on two line and three line hauls, the rate is 2½c and 3c per 100 pounds respectively. (Tr. 396.) We ship a very large amount of pig iron to the Interstate Steel plant whose property adjoins ours on the South, each plant being serviced by the same railroads. The distance between them is about 10 city blocks. As we deliver cars to the railroads, the haul is about from 112th to 117th sts. The normal time of this movement is about 15 minutes, as our engine sets the cars out. We move 10 or 12 cars per day in one movement, giving average revenue of $18.60 per car or $186.00 per run, that is on 10 cars. It averages a little more than that. (Tr. 397.) The annual tonnage of this movement is about 150,000 tons with a railroad revenue

of about $60,000. An increase of rates affecting this movement would cause the shipper and consignee to join their yard tracks and move the freight entirely within their own properties. The distances between 112th and 117th Sts. is about one half mile. (Tr. 397.) We get $1.69 per car for moving this traffic to the railroad tracks with our own locomotives. (Tr. 397.) The Riverside Iron Works is about two city blocks from our plant. The carriers exhibit indicate average minimum one line hauls for pig iron as one mile, which is somewhat excessive as indicated by my exhibit. (Tr. 398.) The proposed increase would increase [fol. 616] our freight charges on pig iron in the Chicago district about $30,000 per year. Under the original proposal it would have been much more, assuming this short single movement within the Calumet district were put on the basis that has been proposed generally. (Tr. 398.) Exhibit 21 shows shipments other than pig iron from the furnace plant during 1926. We show 497 cars of plant refuse moving by Indiana Harbor single line, 7 cars by Pennsylvania and 420 cars two line haul. Except for three or four cars this refuse was waste slag which sells at a price less than loading cost. We moved it because it was blocking our operations. (Tr. 398). The purchaser sold to railroads who used it for a filling. The Indiana Harbor Belt loads this material at $8.10 per car. Rates on other lines vary but are given at the bottom of Exhibit 21. (Tr. 399.) Scrap iron shipments are such as are not easily melted in our own furnaces. The two cars of iron ore were for some special purpose. The document was offered and received in evidence, marked "Exhibit 21, Witness Forrest." (Tr. 399.) Exhibit 22 gives shipments from the coke plant. It shows total shipments and I will read into the record shipments of material other than coke, the latter being the greater part of total movement. Coke shipments for September 1926 were under the average for the year. It is not as representative a month for coke as it was for pig iron. In 1926, all shipments from the coke plant were 34,936 cars, the greater part being coke. Of this number, 28,816 were within the Chicago district and 6,120 outside; 583 were within the Chicago district, that is, the city of Chicago proper and suburbs and not in Indiana; 17 were out of town. Within the switching district, 5,050 cars were moved one line; 12,648 two lines and 11,118 were three line hauls.

(Tr. 400.) Carriers exhibit 11 of Witness Vivian, gives [fol. 617] coke average loading for one line, 38.7 tons; two line, 36.7 tons and three line hauls 30.1 tons. My average made on the same basis compares fairly with those. In 1926, we shipped 5,050 cars to the Iroquois Iron Works, which line haul, with an average loading of 43.2 net tons, moved via Chicago Short Line in private cars with no allowances paid. (Tr. 400.) The average car revenue on this movement was $17.28 per car, moving in approximately 20 car trains with total revenue of $345.60 per train average. (Tr. 401.) Of the 12,648 two line cars, 8,268 moved from our coke plant to our furnace plant and averaged 37 net tons per load in railroad equipment. Average car revenue was about $18.50 in train loads averaging 20 cars although sometimes more with an average revenue of $370.00 per run. It is a shuttle movement. The coke cars being furnished by the Pennsylvania and kept in this service, moving over to the furnace plant and directly back for reloading. (Tr. 401.) There is empty car movement in the Iroquois and Federal Furnace movement, but a very quick movement in both directions. (Tr. 401.) Of the 19,750 cars of other coke shipments, 6,120 were two line hauls averaging 30.6 tons per car, or a total of 187,272 tons moving and by two lines outside the switching district, while 941,154 tons remained within the switching district. (Tr. 401.) The large movements at the beginning of this statement were to blast furnaces. Considerable tonnage was shipped to foundries and still larger went to coal dealers for domestic fuel. In both these cases the rates are considerably lower than those which are proposed. On single line movements to the Iroquois Iron works the rates are 40¢ per net ton, and on two line haul, to the Federal Furnace, 50¢ per net ton. All rates are shown at the bottom of Exhibit 22. (Tr. 402.) On the 1926 business to the two [fol. 618] blast furnaces mentioned, we would pay increased freight charges of around $170,000 more than in 1926 if the proposed increases are allowed. These increases would fall entirely on the producer and owing to the competition in both pig iron and coke, would subject the producer to an increase of around $200,000 annually. (Tr. 403.) We do not feel that the carriers operating in the northern part of the city in the section known as the outer zone although much nearer to the heart of Chicago than these points in

the Southern part, should have the ½¢ per hundredweight arbitrary in excess of the rates at the present time. (Tr. 403.) Certain red lines on Mr. Haynes map indicate carriers not recognizing the switching district line at all, but in our case, giving the same rate charged to points beyond. For example, around Deering, near the heart of Chicago on a line drawn across to the Lake, our coke rate on the Chicago and Northwestern and St. Paul railroad is the same as the rate to the city of Evanston, one dollar and one cent per net ton. We do not believe that ½¢ arbitrary and line haul rates charged within the city of Chicago should be allowed. (Tr. 404.) As far as our own company is concerned, considering our immediate selfish interests alone, I would not object to a zoning system but as to the interests of the entire industrial community any zoning system would certainly be injurious to Chicago and its industries. (Tr. 404.) What Mr. Haynes has said with reference to maintenance of a uniform system throughout the whole district meets my approval. (Tr. 404-405.) As to Mr. Haynes proposition to ex-lake switching rates within the Chicago district, I am not in accord because of certain distinctions that must well be recognized. (Tr. 405.) A dock receiving freight from lake steamers represents a substantial investment. Handling freight from steamers to cars [fol. 619] represents considerable expense. This justifies ex-lake switching rates differing from an industry loading its material direct into the cars as a part of its regular manufacturing business. Chicago having become a dumping ground for plants which run normally to supply other communities in goods. When their local demand falls off they ship by boat from Buffalo or from Cleveland at about $1.50 per gross ton for pig iron. That is a good deal of a hardship to us. We believe users of pig iron in the Chicago district find production here of convenience and economy to them. The two furnace plants, the Federal and the Iriquois Iron, have a productive capacity in excess of consumption in the city of Chicago and year in and year out consumers here get a lower price and better service because of that fact. Switching rates should be designed for Chicago producers rather than to encourage the dumping on our market of commodities produced elsewhere. Exhibit 22 gives all shipments from the coke plant; of the 28,816 cars, 26,948 were coke and the tonnage figures

given and other facts bearing on coke relate to those. (Tr. 406.) On the movement of these cars the one line 40¢ per net ton, two line haul 50¢, with the exception of 12 cars moving to points on the Elgin, Joilet and Eastern Railroad which is not a party to the Lowrey agreement and which is not generally recognized as a switching road, the charge was 60¢. The three line charge under the Lowrey agreement would be 60¢. In the footnote of my exhibit we show a rate of 70¢ where the arbitrary is charged and a rate of 90¢ on combination of Chicago Short Line, Baltimore & Ohio, C. & C. Railroad, running to $1.01 on a very considerable number of cars shipped to the East side of Chicago. (Tr. 407.) We moved from the coke plant 1453 tank cars containing light oil, ammoniacal liquor and coal tar, 208 of these carrying light oil moved by two lines with the ex- [fol. 620] ception of three cars to the Peoples Gas By Products Co. 1,245 tank cars moved three lines and of these, 120 were coal tar. The ammoniacal liquor moved in our own tank cars; The Barrett Co., owned the cars carrying the coal tar which it purchased from us. Light oil moved in tank cars owned by Peoples Gas By Products Co. No allowance was paid for these tank cars in the switching service. Neither per diem nor mileage allowance was paid on these. (Tr. 408.) In 1927 we shipped a greater number of tank cars than in 1926 but the distribution represented a freer one th-n for the period in 1928. We have shipped still more, a larger portion of which will go to points within the Chicago switching district. Tank cars moved back empty to point of shipment but the absence of expenses to the carrier probably more than offsets the back haul. (Tr. 409.) Where the buyer asks for certain routing, we always give it and we naturally designate the routing, but without reference to what the cost is to the carriers. Where a given routing means a long delay, we try to remove it by finding another route. (Tr. 409.) In the interests of economy there should be some co-ordination of switching service that would remove the very circuitous route. (Tr. 410.) The pig iron moving from Cleveland or Buffalo to Chicago by boat at the $1.50 rate is in tramp steamers, not chartered for the season's service. It has not been continuous but the movement has increased considerably the last year. (Tr. 410.) The Bethlehem Steel Co., for the first time in its history

at its Lackawanna Plant in Buffalo, began to ship to lake points by boat. Exhibit No. 22 was offered and received in evidence, marked "Exhibit 22, Witness Forrest." (Tr. 411.) The document marked "Exhibit No. 23, Witness Forrest," offered in evidence (Tr. 411), is a comparison of carriers' records of certain switching movements with [fol. 621] the actual movement of same cars ascertained by our own car tracers. In some instances we cannot reconcile carriers' work sheets as furnished to Mr. Oliver with the actual movement as shown by our exhibit on ammoniacal liquor moving to the Fleischman Co., a three line haul. (Tr. 412.) As ascertained by our car tracers, the actual movement is a much simpler one involving many fewer services than shown by the carriers representatives who drew up the statements. In these they use elements of cost ascertained in cost studies as used in June and August 1927 but applied to actual movement in 1926. This last statement could not possibly be reconciled even by attempting to admit certain elements of service which evidently did not take place. The first of these statements gives pig iron movement to National Malleable & Steel Casting Co., Bellwood, (Melrose Park) for a one line haul on the Indiana Harbor Belt line railroad. In the first case in handling the load there is a cost element of 69.7¢ for transfer from Blue Island and Norpaul and a classification charge at Norpaul at 58.7¢. (Tr. 412.) These services did not occur at all. The charge for this included in the cost study is there by some oversight. (Tr. 413.) The detail of this tracing I cannot give; but our yardmaster here can be put on the stand. He or his men under him know absolutely what has taken place. The personal experience in the riding of cars to see the actual movements was this year, but in 1926 we went to the railroad records. (Tr. 413.) The two items of the Blue Island and Norpaul transfer and the Norpaul classification, amounting to $1,284.00, should not be included in the railroads' costs. (Tr. 414.) It is the cost merely of transfer from Blue Island to Melrose Park that should take the place of the three items [fol. 622] index Nos. 52, 25 and 135. (Tr. 415.)

We have one case, a rather important one, where we have definite information about the movement. (Tr. 416.) This is the movement of coke from the plant of the By Products Coke Corporation to its Federal Furnace plant, a two-line

haul by Chicago Short Line and Pennsylvania. A classification is shown at 108th Street twice, 33 cents being charged in each case. In the month of September, 1926, 711 cars moved in this way. Sixty-six cents per car amounts to $469.26. This appears to be an over-charge in arriving at the 1926 cost. This is a shuttle movement between the coke plant and the blast furnace, a trainload movement. There is no classification on these cars and none needed. They pause at the Claburne yard near the Federal Furnace, where our engine comes out and hauls them in. (Tr. 425.) I say 66 cents, amounting for the month of September, 1926, to $469.26, is an over-charge or an over-estimate of the cost. (Tr. 426.) I skipped the other two to get to this one, because it is a simple case and one where the movement is so clearly known to our men, being a daily shuttle movement with coke cars going back and forth all the time, taken out of our plant by the Chicago Short Line, left at Claburne yard at the east side of the river and there taken by our engine and pulled into the furnace plant. There is never any occasion for classification and none is made. The classification shown would be by the Pennsylvania Railroad at 108th Street. I mention that it is out of order because it is such a simple case and one where conditions are so fully known. (Tr. 426.)

The second of the sheets gives movement of our coke from our plant to the Southern Car Wheel Company at Hammond, formerly New York Car Wheel Company. Follow- [fol. 623] ing down the line we have the following items which our car tracer says do not belong in the study: Classification at Burnham, 46 cents, that is element No. 6 of the Indiana Harbor Belt; also element 300, Indiana Harbor Belt, weighing empty, 77 cents; element 214, transfer Osborne, 36 cents; element 26, classification Osborne, 49 cents; element 87, transfer Osborne to Gibson, 35 cents; element 12, classification Gibson north hump, 84 cents; (Tr. 427;) element 69, transfer Gibson to Dolton, 42 cents, making a total of $3.69, which our tracer fails to find in the movement, which is without considering delivery of the empty car. (Tr. 428.)

On the third sheet is movement of light oil, Chicago Short Line and Belt Railway to Peoples Gas By-Product Corporation, covering element 110, second weighing at South Deering, 45 cents; element 42, transfer South Chicago to Clearing, 69 cents; element 8, classification at west-bound hump,

32 cents; element 11, classification west yard pull-down, 42 cents; element 17, classification at Hawthorne, 34 cents, totaling $1.77, which do not seem to belong in the study. Elements 102 and 106, being transfer to South Deering and delivered to Belt, our tracer consolidates into a single movement. This would require a deduction of 22½ cents more. The elements to be deducted I make from a comparison of the report from our car tracer with report from the carriers. (Tr. 428.)

The first item, $1.02 transfer By-Products Coke to South Deering, on page 3, should be replaced by one move direct to the Belt, there being a belt interchange there. (Tr. 429.) Element 21, classification at South Chicago for the Belt, is recognized as correct. The next three items are questioned, but we leave in No. 34, Clearing to Hawthorne. (Tr. 429.) I am not prepared to say how the car would move [fol. 624] from South Chicago to Clearing; I have left in the expense Clearing to Hawthorne, but would not put it over the hump at all at Clearing because it would not be there. (Tr. 430-431.) It would be delivered to the Belt at South Deering, moving from there to Hawthorne. If the car actually went to Clearing, then all the items would be in, and then the three should come out. (Tr. 431.)

Mr. Barse: Those moves are made both ways, depending upon the volume of business. Whichever is the more economical volume of traffic considered, the cars are handled that way. (Tr. 432.)

The Witness (continuing): In the cost study they were handled in the most expensive way. The weighing at South Deering should be eliminated from No. 3. (Tr. 432.) This being oil, the general practice in handling tank cars is to take stencil capacity of the car with the agreed weight per gallon. (Tr. 433.) An over-charge amount is not weighed at all. Two weighings are shown. At our plant the light car was weighed, element 110, 45 cents, and the loaded car was weighed at our plant, 45 cents, that is South Deering. Those were the only two. We proposed to cut out one because there was no weighing of the car light. It must have been weighed before that, but not in this movement. (Tr. 433.) Light oil, ammoniacal liquor or tar are purchased by gallonage, which is usually marked capacity of the car. (Tr. 434.) We do not weigh every car light, but we weigh most of them. We weigh often enough to know their

weight. Our own weighmaster does the weighing and is recognized by the carriers. This is entirely at our expense. At the cokeplant we sometimes use our locomotive cranes getting cars to the scales, otherwise the Chicago Short Line [fol. 625] engines put them there. (Tr. 434.) There is no special charge for the second weighing when the railroad does the work. (Tr. 435.) If, however, there is a reweighing of the inbound load, there is a charge in all cases. Ordinarily the railroad does not weigh the empty at all. We do that ourselves.

There is no scale cost to the railroad at either of our plants. The weighing is actually done by ourselves at our own expense. Nothing is done by the railroad except, in instances, to move the car. (Tr. 435.) In this particular case it appears that the car was not weighed but once. Tr. 436.) These cars move in and out of our plant frequently and we know the weight of every one of them. If inspection shows the car empty we might not weigh it light every time it comes in. Weighing of cars loaded with coke or pig iron is very commonly unnecessary on light weight, because it may have been weighed light coming in. A very large proportion of the cars which we sent out under load, whether for linehaul or switching, are cars which have come into our plant under load. (Tr. 437.)

A large proportion of cars we ship under load come into the plant under load. (Tr. 438.) This is not true of tank cars, as they come in empty, nor true of blast-furnace service, whether our own or the Iroquois furnace. These make a shuttle movement and very rarely are they held for back load. The cars coming in loaded are sometimes reloaded at the place unloaded. (Tr. 438.) A coke car going to the furnace plant would be loaded with anything going back to the coke plant, probably slag or something used for filling from there, and that would be where the coke was unloaded. (Tr. 439.) This would be taken by a yard movement of our own. We get $1.69 for the yard movement per engine only when the car goes out. No matter [fol. 626] what is taken in the plant we are paid only for one movement of the car. Our coke cars are not reloaded with back load to any appreciable extent. Leaving out these movements mentioned, a very large proportion of cars are not brought into the plant empty. We have some empty movement, but as in the case of the Interstate Steel, we use cars which come into the plant under load. (Tr.

439.) Both pig iron and coke go out in open top cars, most of which move back towards the line from which they came. (Tr. 440.) We checked the coke movement, which was 711 cars. (Tr. 440.) The information as to the number of cars our men followed I do not have, but I can get and will furnish, with the number to which exceptions were made. (Tr. 441.)

Cross-examination.

By Mr. Davis:

Our coke plant operation at the present location was started in 1905, and is not connected with any other interest. (Tr. 442.) The coke output exceeds the pig iron tonnage. (Tr. 442.) This plant was started for the production of all products that it could get out. Coke by-products were once of greater relative value than they are today, and especially is that true of ammonia. Synthetic methods of obtaining nitrogen have reduced the value of ammonia products. We furnished the City Gas Company with a very large amount of gas, but Peoples Gas By-Products Corporation buys our light oil. It belongs to Peoples Gas, Light & Coke Company. We never sold directly to the gas company any of our by-products. (Tr. 443.) Our by-products do not exceed our coke and pig iron business. (Tr. 444.) They amount to very little compared with coke and pig iron.

The weight of the pig iron cars shown is 46½ tons gross, and net 52½ tons, and means gross or long tons and net [fol. 627] tons respectively. Roughly, 46½ gross tons equals 52½ net tons. (Tr. 444). We have very keen and destructive outside competition. (Tr. 445). This exists on all iron and steel articles, and boat competition is felt in manufactured steel commodities. We have local competition with the Chicago By-Product Coke Company, which operates a large by-product plant here, and they have the same competition we have. (Tr. 445.)

Generally in fixing switching rates, competition in main line or line haul rates should not be considered, but when main line rates are quite notably depressed, it is a matter that can be taken into account. (Tr. 445-446.)

The rate on pig iron from Birmingham to Chicago is $6.01 per gross ton, all rail. (Tr. 447.) The rate barge

and rail is lower. Chicago switching rates are absorbed out of them. The $6.01 rate delivers to any point in Chicago. (Tr. 447.) The present rate was not in the Sloss-Sheffield case. (Tr. 448.) This was a rate published by Southern carriers, lower than the Sloss-Sheffield base, which, after hearing, the Commission permitted to go into effect. (Tr. 448.)

In fixing the switching rates for the Chicago district I do not believe consideration of the line haul rate from Alabama should be given. (Tr. 449.) Switching rates cannot be made by basing them on line haul rates. It is a question of considering what might be an intolerable burden in the raising of rates, above what the traffic could bear, assuming that the carriers are not actually losing money on the existing rates. The reports of all purely switching roads show very good revenue or very good earnings where they depend entirely upon switching service. Nominally our shipping clerks bill all shipments, sometimes at the request of the buyer and sometimes at the solicitation [fol. 628] of the carriers (Tr. 449), assuming that one route is as low as the other. In no case does the shipping clerk know anything about railroad cost. (Tr. 450.)

The shipments shown in Ex. 22 as over two lines could not have been covered by a one-line movement. The one-line movement in this case would be the Chicago Short Line. It takes coke to the Iriquois blast furnace, but at no other point could it deliver coke on its own line. In my exhibits showing two-line hauls there is no movement that could have been handled over one-line. (Tr. 450.)

We think it is rather immaterial to the shipper whether the route is long or is a one- or a two-line haul, except as carriers want to make circuitous routes the basis for higher charges. (Tr. 451). If there are three routes open it would be a safeguard in case of accident or anything of that sort. More routes give better service, but I hold there should be coordination of various switching facilities so that there will be less roundabout hauling and probably less duplication by various switching lines. (Tr. 451.) Coordination would not ordinarily mean one route or the shortest combination of lines, unless there was some special obstacle in the way of quick movement by some combination. (Tr. 452.) There are many cases where special features exist in the movement where a variation in the

rates on the same commodity via one line might be reasonable. (Tr. 452.)

The Indiana Harbor Belt received about 99 per cent of our business, as shown in Ex. No. 21, because the buyer or the purchaser of it wanted it to go there. (Tr. 453.) Most of the refuse is slag which we turn to a contractor. It depends on where the railroad work is going on. The Indiana Harbor took it to certain places where the purchaser [fol. 629] disposed of it. We did not sell it to the railroad nor did the railroad dispose of it. It was sold by the contractor who took it. (Tr. 453.) The Indiana Harbor Belt's rate is $3.90 less than the Pennsylvania, and that would be a reason why the contractor would want it to go by Indiana Harbor Belt. (Tr. 453.) None of our men rode these cars of refuse. (Tr. 454.) If a car comes in to our plant under load we get a switching allowance of $1.69, and if the same car goes out under load we get a similar allowance.

On page 1 of Ex. 23 we claim the car did not go to Norpaul, and that instead of a transfer from Blue Island to Norpaul and classification at the latter, and then transfer from Norpaul to Melrose Park, that the charge should only have been for the transfer from Blue Island to Melrose. (Tr. 454.)

Our men could not go back and ride cars in 1926, but they did ride cars going over the same routes at later periods. (Tr. 455.)

Redirect examination.

By Mr. Walter:

In examining the carriers' studies there were 17 actual cases where we traced the car movements, reported here. (Tr. 456.) There was 1 not included in the carriers' studies, which leaves 16 cost study movements which our men traced. (Tr. 457.) Seven of these were wrong and 9 were correct. (Tr. 457.)

F. E. WEBSTER, in behalf of respondents, sworn and testified as follows:

Direct examination.

By Mr. Richmond:

I am general freight agent of Chicago & Eastern Illinois Railway and have been in the traffic department of that [fol. 630] company over twenty years. (Tr. 458. My testimony will deal with points between the Chicago-Chicago Heights switching district, which cover rates between Chicago Heights and Chicago proper, and between points in Chicago Heights, the same as within this district. (Tr. 459.) These rates are under suspension in I. and S. docket No. 2900, and my testimony will be directed to the matters involved in I. and S. 2900 and General Investigation No. 19610. (Tr. 459.)

The rates under suspension between Chicago and Chicago Heights were published in Agent Galligan's Tariffs I. C. C. No. 90 and 91. These tariffs proposed to put in effect a compromise basis of rates agreed to between the interests at Chicago and Chicago Heights, and the railroads. (Tr. 459.) The Commission held that it would be unjustly discriminatory against Hobart, Indiana, to have the same rates from Chicago Heights to Chicago on hollow building tile as applied within the district. (Tr. 460.) The hollow tile rates from St. Anne, Kankakee, Beaver Hill, Chicago Heights and Hobart were involved, but it is not my belief that that situation affects or involves the general adjustment of switching rates within the Chicago-Chicago Heights switching district. (Tr. 460.) From my knowledge of the situation in this territory I do not know of another rate situation like that between Chicago and Chicago Heights. (Tr. 461.)

The development at Chicago Heights began in 1889 or 1890 by the Chicago Heights Land Association, which owned a large tract of land, mainly farms, surrounding a place named Broome, now Chicago Heights. The Chicago Heights Terminal Transfer Railroad was built by the Chicago Heights Land Association to serve industries located at Chicago Heights. (Tr. 461.) Prior to 1900 various rates [fol. 631] applied between Chicago and Chicago Heights, but in 1900 the Chicago & Eastern Illinois made a contract with the Chicago Heights Terminal Transfer Railroad

whereby the former agreed to maintain a rate of $5.00 per car between Chicago and industries at Chicago Heights served by the Chicago Heights Terminal Transfer Railroad. (Tr. 461.) In 1905 this contract was revised and the rate made $5.50 per car of 60,000 pounds, approximately 18.3 cents per ton. (Tr. 462.) The $5.50 per car rate was maintained until May 1, 1917, when under order of the Illinois Commission there was established, in lieu thereof, specific commodity rates between Chicago and Chicago Heights on a commercial parity in rates with industries in the then defined switching district limits published in Lowrey's Tariff I. C. C. No. 36. (Tr. 462.) Revisions of these rates have been made since 1917, but in these the rates between Chicago and Chicago Heights have been made approximately the same as rates within the Chicago switching district and as at present published in Galligan's Tariff I. C. C. 63, Illinois Commission 21, which brings up to date rates, rules and regulations published prior and known as the Lowrey agreement. (Tr. 462-463.) These switching rates apply inter-terminal within the Chicago switching district. Intra-terminal or single-line switching rates under the Lowrey agreement were published by individual roads. (Tr. 463.)

The present rates between Chicago Heights and Chicago give to the Chicago Heights industrial district approximately the level of rates in effect in the Chicago switching district, as defined in Galligan's Tariff I. C. C. No. 98, and are published in Baltimore & Ohio Chicago Terminal Railroad Tariff I. C. C. No. 360 and Chicago & Eastern Illinois Tariff I. C. C. No. 248. The rates are published by the railroads named because Chicago Heights is not within [fol. 632] the geographical limits of the Chicago switching district as defined in Galligan's Tariff I. C. C. No. 98. In the proposed tariffs under suspension, however, Chicago Heights is included as a part of industrial Chicago, and in disposing of this proceeding we hope the southern boundary line of the Chicago switching district will include Chicago Heights so that all industries thereat may have the same tariffs, publishing rates, etc., as apply to Indiana Harbor, Hammond, Harvey, etc. (Tr. 463.) The Chicago & Eastern Illinois Railroad desires the inclusion of Chicago Heights within the now defined Chicago switching district, and that Chicago district switching rates apply thereto.

(Tr. 464.) For the past twenty years the Chicago & Eastern Illinois Railway has given Chicago Heights approximately the same level of rates as industries located within the Chicago switching district. (Tr. 464.) The Chicago Heights Terminal Transfer Railroad is a separate and distinct carrier from the Chicago & Eastern Illinois. It is a separate operating terminal carrier, and in applying rates between that terminal company and its connections, including the Chicago & Eastern Illinois, it must be considered as a two-line haul. When moving beyond the terminal rails and its direct connections shipments move in a three- or more line haul. (Tr. 464.)

Speaking for the Chicago & Eastern Illinois and the Chicago Heights Terminal, we will be satisfied if Chicago Heights is given the same rates, rules and regulations as apply from, to and between industries in the Chicago switching district located at Harvey, Indiana Harbor and other points within said switching district. (Tr. 465.) This should be done by extending the Chicago switching district boundary line south of Dolton on the Chicago & Eastern Illinois to include Chicago Heights. Movements from an [fol. 633] industry on the Chicago & Eastern Illinois Railway at Chicago Heights Terminal to a point on the Chicago & Eastern Illinois would be a two-line haul. (Tr. 466.)

I have five exhibits. (Tr. 466.) The first is a blue print map showing the industrial situation at Chicago Heights, the line of the Chicago Heights Terminal Transfer Railroad and other roads serving Chicago Heights, the different roads designated by a key color. (Tr. 467.) Approximately 88 industries at Chicago Heights are on the line of the Terminal Railroad. In fact, practically all except two or three are on the terminal railroad. One or two of these are on the Chicago & Eastern Illinois. (Tr. 467.) We think there is no discrimination because an industry located on the Chicago Heights Terminal would have to pay rates for a two-line haul as against an industry on the Chicago & Eastern Illinois paying for a single-line haul, as situations of that character exist all through the Chicago district. (Tr. 468.) The Chicago River & Indiana is owned by the New York Central, but traffic moving over the former and the latter is a two-line haul. It is the same as the situation between the Chicago Heights Terminal and the Chicago & Eastern Illinois; and no different treatment is being

asked for Chicago & Eastern Illinois or the Chicago Heights Terminal Transfer Railroad than already exists in the Chicago district. (Said map was offered and received in evidence and marked "Ex. No. 24, Witness Webster.") (Tr. 468.)

My second exhibit, No. 25, is a map of the Chicago switching district showing the boundaries of the original district in 1911, the changes subsequent to the year 1912, and the change suggested by the Chicago & Eastern Illinois to include Chicago Heights. (Tr. 469.) The map shows a number of changes made since the establishment of the original [fol. 634] boundaries, and the last have been made to extend south of Harvey to Homewood, Illinois, on the Illinois Central. Homewood is almost a stone's throw across from Chicago Heights. (Said exhibit offered and received in evidence and marked "Ex. No. 25, Witness Webster.") (Tr. 469.)

A meeting was held and attended by executive traffic officers of quite a few Chicago lines, and the exhibit includes my report thereof made to Vice President Ford of our company.

Mr. Davis: We object to Ex. No. 26 as it throws no light on this case.

The Witness (continuing): It is a part of the history of the situation. (Tr. 470.)

Chairman Campbell: If it is merely a matter of history—we will let it go in. (Tr. 471.)

The Witness (continuing): That is all.

Chairman Campbell: But if it is intended to bind anyone we will reject it. It may be received as a matter of history only. (Tr. 471.)

(Said exhibit offered and received and marked "Ex. No. 26, Witness Webster.") (Tr. 472.)

Exhibit 27 is copy of a letter written by the president of the Chicago & Eastern Illinois to the Chicago Heights Land Association, setting forth the rate of $5.50 as a part of the operating contract entered into in May, 1907, which I offer in evidence.

Mr. Davis: Objected to as immaterial.

The Witness (continuing): This is historical also.

Chairman Campbell: And therefore it will be received as a matter of history only and with no binding force upon the Commission or anyone connected with the proposal. (Tr. 472.) The objection is overruled and it is received as a matter of history.

[fol. 635] (Said exhibit was received in evidence and marked "Ex. No. 27, Witness Webster.")

The Witness (continuing): My Exhibit 28 illustrates the present and proposed rates applied to iron and steel in effect at the present time between industries at Chicago Heights and at Chicago. It sets forth rates and earnings on a minimum car, 60,000 pounds minimum, for two-, three- and more line hauls. It shows rates between the points mentioned here the same as rates within the Chicago district for two-, three- or more line hauls. (Said exhibit received and marked "Ex. N. 28, Witness Webster.") (Tr. 473.)

Cross-examination.

By Mr. Cardy:

Chicago Heights has had substantially the same level of rates as applied in Chicago for over twenty years, and in our proposed adjustment we do not intend to disturb that situation. (Tr. 474). Based on conditions at Chicago Heights there is a commercial necessity requiring substantial parity of rates as between that point and points within the Chicago switching district. (Tr. 475.) The Chicago & Eastern Illinois owns the capital stock of the Chicago Heights Terminal Railroad. A more complete history of Chicago Heights development and of the Chicago Heights Terminal Railroad is found in I. C. C. Finance Docket 6175. (Tr. 475.)

The operating conditions in moving traffic between points in the district and from Chicago Heights to the district are substantially the same, though we have an operating man who is perhaps better qualified to testify to that than I am. (Tr. 476.) In making the proposed change we propose to cancel the south bound rates from Chicago Heights that are lower than from the Chicago district and to make [fol. 636] Chicago rates apply southbound from Chicago Heights. (Tr. 476). These lower rates apply on all traffic.

(Tr. 477.) There may be similar changes in the reverse direction. If certain points north have rates lower than from Chicago Heights we propose to put them all on the same basis, with the assistance of the other Chicago lines. (Tr. 477.)

Chairman Campbell: You told me when you got through that you would explain that Hobart situation, but I do not see explanation of it yet.

The Witness (continuing): I have not had a chance, Mr. Commissioner. (Tr. 477).

With respect to movement of hollow building tile from Chicago Heights versus Hobart, as against St. Anne, Kankakee and Beaverville into Chicago, it appears to me there was no more justice in making rates from Chicago Heights on the basis of what might be termed a road-haul rate, $1.05, than there was to change the rate from West Pullman, the point at which the Hobart complainants had a plant. (Tr. 478.) They had the advantage of the Chicago switching district rate and Chicago Heights had that rate. While I am not criticising the Commission, I think in disposing of that case justice would have been done by dealing only as with Hobart, St. Anne, Kankakee and Beaverville and leaving the Chicago Heights rate on the Chicago basis, where it belonged. (Tr. 478.)

In dealing with commodities like sand, gravel, hollow building tile, brick or other common commodities that are produced at points relatively near Chicago, there would be no stopping of the proposition if discrimination exists. (Tr. 479-480.) But if you start with your base rate and the theory of the Hobart case applies, you are getting down to the principle of relating switching rates to road-haul rates, or relating road-haul rates to switching rates, and [fol. 637] commercially that cannot be done. (Tr. 481.) Chicago Heights is 26.6 miles from a station in Chicago. (Tr. 481.) From the Rock Island station in Chicago to Joliet is about 37 miles; from Chicago to Waukegan is 37 miles, and to Elgin around 35 or 37 miles; and to Aurora 36 or 37 miles. (Tr. 482.) From Chicago to Chicago Heights is 26.6 miles; to Homewood 23.4 miles; to Gibson transfer, Indiana, 25.3 miles; to Hammond 20.6 miles; to South Hammond 24.6 miles; Osborne 24.2 miles; Whiting 24.1 miles; Globe 25, the latter a new point put in the dis-

trict by the Pennsylvania Railroad for one or two industries located there. (Tr. 482.) If that can be done the extension of the district lines to Chicago Heights, with its 88 industries, is certainly justified. (Tr. 483.) Taking into consideration competition, service, relation between industries, other traffic, etc., I would say 3½ cents is a reasonable rate for the distance between Chicago and Chicago Heights. I did not take into account the congested territory or the value of the property, etc. I was merely considering operating service. Commercial competition, the necessity for creating an industrial center, the new tonnage that we know is profitable tonnage, were the matters considered by me. (Tr. 483.) If switching rates in the Chicago district are to be based on valuations of terminals, the rates of 3, 3½ and 4 cents should be thrown out of the window. (Tr. 484). The hollow tile plant at Hobart, Indiana, is owned by the National Fireproofing Company, which also owns a plant in Pullman, Illinois, in the Chicago district.

To put Hobart, Indiana, on the Chicago switching basis is a matter for the Pennsylvania Railroad to determine in the first instance. (Tr. 485.) That what is purported to be a spreading or an extension of the Chicago Switching District is nothing more than a gesture. We have it today [fol. 638] and we have had it for fifteen or eighteen years. (Tr. 487.) But regarding Chicago Heights, if the proposed rates should go into effect between Chicago Heights and the Chicago District, it gives to the former, nothing but what it has had for many, many years in the form of rates. (Tr. 488.) I cannot say how many car loads of freight the Chicago Heights Terminal Transfer Railroad Co., originates per year, but the number runs into many thousands. (Tr. 488-489.) I did not look into the question before the Chicago & Eastern Illinois purchased the stock of the Chicago Heights Terminal Transfer Railroad. I have a general idea of the traffic originated by the latter road. It is something over 40,000 cars in and out. All industries at Chicago Heights on the Chicago & Eastern Illinois Railroad are shown in Galligans Tariff No. 10. There are two or three and I would not say this railway steel spring is a small industry. It is only as to the industries on our railroad that would get one line haul rates if our proposal is approved by the Commission. (Tr. 490.)

The Chicago Heights Terminal and the Chicago Junction Railway and the Chicago River and Indiana are comparable. I do not know the number of cars originated by the Chicago Junction, but I know its trackage and about its industries served. They were very comparable. They are both short lines.

We think Chicago Heights should have the switching district rate basis because it would give industries at Chicago Heights the same treatment as industries located at Harvey, Indiana Harbor or at Hammond. (Tr. 942.) If the district is enlarged to include Chicago Heights it would be necessary to have the co-operation of the other railroads and in my historical statement it is shown that all of the railroads in trying to work out the Chicago-Chicago Heights situation agreed that it was proper that Chicago Heights [fol. 639] should be included. (Tr. 493.) The simplest way to keep Chicago District boundary lines from spreading is to have the boundaries fixed by the commission.

The hearing at 5 o'clock P. M., adjourned to May 18, 1928 at 9:30 A. M. (Tr. 494.)

Pursuant to adjournment, hearing reconvened Chicago, May 18, 1928, 9:30 A. M. (Tr. 496.)

R. J. Pierce called in behalf of Chicago Heights interests was sworn and testified as follows. (Tr. 496.)

Direct examination.

Mr. Cardy:

Am Secretary, traffic manager of the Manufacturers' Association of Chicago Heights and have been since April 23rd of this year and have been engaged in railroad, industrial and commercial work for the past 21 years. (Tr. 496.) Since associating with the Manufacturers' Association, I have made an investigation of rates, charges and conditions pertaining to the movement of car load traffic between Chicago Heights and the Chicago Switching District.

Chicago Heights is in the Southeastern part of Cook County, 3.7 miles beyond the South boundary of the Switching District, on the Chicago & Eastern Illinois Railroad and within the District on the Baltimore & Ohio, Chicago

Terminal. (Tr. 497.) Thornton is the first station North of Chicago Heights with two industries: The Brownell Improvement Company, which is a large crushed stone and lime concern and the Central Amiesite Mfg. Co. These industries are listed in Galligans Tariff, I. C. C., 108, as being within the Chicago Switching District on the Baltimore & Ohio, Chicago Terminal. (Tr. 497.) The Baltimore & Ohio Chicago Terminal, the Chicago & Eastern Illinois Railway, the Chicago, Milwaukee, St. Paul & Pacific, Michigan Central, and the Elgin, Joliet & Eastern Railway, serve Chicago Heights. I offer exhibit No. 29, which is an excerpt from Chicago Terminal Transfer Tariff, I. C. C. 13, showing purposes of establishing the per car [fol. 640] charge between Chicago Heights and the Chicago Switching District, which was received in evidence, marked "Exhibit 29, Witness Pierce." (The testimony of witness regarding the history and development of Chicago Heights and its rate adjustment is substantially the same as that given by the Witness Webster, and for that reason is omitted from the abstract.) My exhibit No. 30 is a chronological history of the carload rates between Chicago Heights and the Chicago Switching District as compared with carload rates within the Chicago District. (Tr. 500.) Said Exhibit received in evidence, marked "Exhibit 30, Witness Pierce." (Tr. 500.) One of the primary purposes of the Lowrey Agreement was to establish a uniform rate within the Chicago District and when the Baltimore & Ohio Terminal Tariff I. C. C. 22 took effect September 1st, 1911, placed rates between Chicago Heights and the Chicago District on exactly the same basis as the rates within the district. (Tr. 502.) By basis, I mean the same level; the same rates. (Tr. 502.) 1900 to the present time, Chicago Heights has grown from approximately 5,000 to a city of approximately 30,000. The growth has been largely due to the existence of the Chicago Switching District. I offer Exhibit No. 31.

Mr. Davis: We object to Exhibits 31 and 32, purporting to be contracts, agreements and letters which I understand courts have declared are not binding and could not be binding on the railroads or the commission. (Tr. 503.)

Chairman Campbell: Even historically, I think it is a mistake to put this sort of stuff into the record, and we are excluding it. (Tr. 504-505.)

The Witness (continuing): I omit giving detailed rate history between Chicago Heights and Chicago Switching District because it would duplicate substantially the testimony given by the witness Webster. (Tr. 506.)

Exhibit 31 shows basic carload rates under suspension between Chicago Heights and the Chicago District. (Tr. [fol. 641] 506.) Offered and received in evidence, marked "Exhibit 31, Witness Pierce" and is forwarded herewith. It shows that by publishing the suspended rates, the carriers placed Chicago Heights on the Chicago Switching District basis. (Tr. 506-507.) Exhibit 32 shows car load traffic moving between Chicago Heights and the Chicago Switching District, via the Baltimore & Ohio Chicago Terminal and the Chicago & Eastern Illinois from January 1 to December 31, 1927 and was offered and received in evidence marked "Exhibit 32, Witness Pierce". (Tr. 508.) 9,467 car loads from Chicago Heights to the district and 5,784 car loads to Chicago Heights from points in the district or an average of 1,271 car loads per month moved between January 1 and December 31, 1927. (Tr. 509.) Approximately 30% of the car load traffic from Chicago Heights goes to points within the Chicago Switching District. Exhibit 33 shows distances from Chicago Heights to all stations on the Baltimore & Ohio Chicago terminal and the Chicago & Eastern Illinois, taking car load rate of 2½¢; offered and received in evidence, marked "Exhibit 33, Witness Pierce.". (Tr. 509.) There are 35 stations to which the 2½¢ car load rate applies from Chicago Heights and the average distances to those stations is 17.1 miles. Based upon 60,000 pounds minimum, the average revenue per car mile for the average distance is 88¢. (Tr. 510.) Exhibit 34 shows list of manufacturers and industries located at Chicago Heights that ship and receive car load freight, moving between Chicago Heights and the Chicago Switching District. Offered and received in evidence, marked, "Exhibit 34, Witness Pierce." (Tr. 510.) The exhibit does not include all industries located in Chicago Heights. It covers the industries shipping or receiving car load freight only, moving between Chicago Heights and the Chicago Switching District. (Tr. 511.) My survey in this respect was not complete. In addition to the carload movement mentioned, the concerns named in Ex- [fol. 642] hibit 34 received raw materials from points

within the Chicago Switching District which include asphalt, iron and steel bars, lumber and many other products. (Tr. 512.) Exhibit 35 shows list of industries in the Chicago Switching District that produce articles competitive with similar articles produced in Chicago Heights. Offered and received in evidence, marked "Exhibit 35, Witness Pierce." (Tr. 512.) This exhibit is submitted to show the commercial necessity for the same basis of rates between Chicago Heights and the Chicago Switching District as applies within the Switching District Territory. (Tr. 512.) The Midland Terra Cotta Co. produces terra cotta in the Chicago Switching district and it is also produced at Chicago Heights by the Northwestern Terra Cotta Co. Manganese Steel castings produced in Chicago Heights by the American Manganese Steel Co., competes with manganese Steel Products in the Chicago Switching District produced at Cragin and Kensington, Illinois. (Tr. 513.) Castings are priced F. O. B. Foundry and any increase in the rates from Chicago Heights to points within the district over rates previously prevailing will have to be absorbed by the American Manganese Steel Co. This Exhibit does not show all concerns located in the Chicago Switching District which produce articles competing with those produced by industries at Chicago Heights. The two examples mentioned are merely illustrative of the situation. (Tr. 513.) As a result of my survey it is clear that any increase in the rates from Chicago Heights to points within the switching district will have to be absorbed by the shippers or producers at Chicago Heights. (Tr. 514.) Any change in the rate adjustment which places Chicago Heights on a higher rate level than the Chicago District, will have an immediate injurious effect upon all industries at Chicago Heights. (Tr. 515.) I am familiar with the [fol. 643] transportation conditions prevailing between Chicago Heights and the Chicago Switching District. The carriers handling the traffic between Chicago Heights and points within the Chicago District are the Baltimore & Ohio, Chicago Terminal and the Chicago & Eastern Illinois Railway Companies. (Tr. 515.) Freight originating in the Chicago District destined to Chicago Heights via the Baltimore & Ohio, Chicago Terminal, is first assembled at Barr Yard, near Blue Island. A train leaves Barr Yard about 5:30 P. M., for Chicago Heights, which is operated

by a transfer crew under the supervision of the general yard master and the running time is 45 minutes. This train operation is substantially the same as train operation between two terminal yards in the Chicago Switching District and the movement is a switching movement under switching rates as published in the Tariffs. (Tr. 516.) On reaching Chicago Heights, delivery of the cars and the train are made to the connecting line and train returns to Barr Yards with freight from Chicago Heights, destined to the Chicago Switching District. (Tr. 516.) The North bound operation is the same as the South bound movement. The train leaves Chicago Heights about 9 P. M. When it reaches Barr Yards, the cars are then lined up for the different connections in the district and deliveries are made to the terminal yards in the district. (Tr. 517.) On the outbound movement, the Chicago Heights Terminal Transfer Railroad picks up the cars from the industries on its line and moves them to its classification yard and after classification, deliveries are made to the connecting lines in Chicago Heights between 4:00 to 7:00 o'clock P. M. each day. Freight from Chicago Heights to the Chicago District, moving via the Chicago and Eastern Illinois Railway is handled to Haney Yards located near Dolton, Illinois. (Tr. 517.) On the inbound movement, Chicago [fol. 644] Heights Terminal receives cars originating in the Chicago District from the Baltimore & Ohio Chicago Terminal and the Chicago & Eastern Illinois at Chicago Heights for delivery to points on rails of the Chicago Heights Terminal. (Tr. 517.) This freight is taken from these connecting lines in the morning to the terminal company's classification yards and then grouped for the engine working the territory according to the location of the industries in Chicago Heights to which the cars are to be delivered and when deliveries are made, the Chicago Heights territory engine performing this service also pulls loaded outbound cars as well as the empties. (Tr. 518.) The transportation rendered by these two carriers between industries located in Chicago Heights and industries located in the Chicago Switching District is substantially the same as the service performed by these carriers between industries located within the Chicago Switching District. (Tr. 519.)

We feel that the future welfare and prosperity of Chicago Heights as an industrial community depends entirely

upon the continuance of not to exceed the same rate relationship as now exists between Chicago Heights and the Chicago Switching District. (Tr. 519.) We further believe that the competition and transportation conditions between Chicago Heights and the Chicago Switching District justify the maintenance of this basis. There are 83 industries located on the Chicago Heights Terminal Transfer Railroad and all are members of the manufacturers association of Chicago Heights. All of these industries have a very substantial investment in their properties. (Tr. 520.) The Jones-Laughlin scale, in my opinion, is no more applicable from the Chicago Heights to the Chicago Switching District than it is between any points within the district. (Tr. 520.) It should not be applied to the movement of iron and steel within the confines of any switching [fol. 645] district or to any freight handled in a switch or transfer movement. The scale does not apply in the Pittsburg switching district, nor in any others. The extent of the switching district should be controlled by the transportation service rendered by the carriers; that is, whether the service is a switching service, a transfer service or a road haul service. As to the reasonableness per se of the rates between Chicago Heights and the switching district, we rely upon the evidence that has been offered or that will be offered by other witnesses, so far as Chicago Heights is concerned. (Tr. 522.)

Cross-examination by Mr. Davis, representing respondents:

While I was located at Terre Haute, Ind., before going to Chicago Heights, I did have occasion to confer with the carriers who procured a continuance of the rates on iron and steel articles from Terre Haute to Chicago, based upon the differential of 10½¢ over the rates in the district. We did not ask for any increase in the district or that their rates be related to the district other than for the maintenance of the old relationship. (Tr. 522-523.) I do not recall in asking for the maintenance of the 10½¢ differential Terre Haute under Chicago, that I cited Chicago Heights as being without the Chicago District. (Tr. 523.) The rates South bound from Chicago Heights are not as a general proposition lower than the Chicago District rates to those points. My investigation of rates from Chicago

Heights South bound, East bound and North bound show they are substantially the same as from Chicago as to class and commodity rates. (Tr. 523.) If there are rates lower from Chicago Heights than apply from Chicago, I am not [fol. 646] prepared at this time to say that we would not object to the increase in those rates. I would want an opportunity to discuss that matter with our executive traffic committee. I have discussed the question of what we now ask and at our meetings, the question of raising rates from Chicago Heights that might be lower than from Chicago was not discussed. (Tr. 524-525.) The industries listed in Exhibit No. 35 located in the Chicago District produce and sell articles similar to those industries located at Chicago Heights and under the proposed basis, the rates for single line, two line and three line hauls would be the same whether in the district or from Chicago Heights. Under the rates proposed, Chicago Heights would have the same rate basis or the same rates as the Chicago District and Exhibit No. 35 was not offered for the purpose of showing discrimination in the proposed basis but only to show that in the proposed rates the carriers considered that Chicago Heights and the Chicago Switching District should be on the same basis. (Tr. 525-526-527.) In my Exhibit 33, the mileages shown are via the Baltimore & Ohio Chicago terminal, down to the point where the mileages are shown via the Chicago & Eastern Illinois Railway. The distances shown, to Austin Park in the Exhibit is 31.7 miles; to Oak Park, 23.7 miles. If the Baltimore & Ohio Chicago Terminal cannot reach Oak Park by its rails without going through Austin Park, then the mileage shown to Austin Park may be in error. (Tr. 528.) I have never worked around the Barr Yard of the Baltimore & Ohio Terminal. (Tr. 529.)

Redirect examination:

The distinction, line haul movement and a strictly switching movement is this: A switching movement is a general [fol. 647] movement of cars under switching rates, being made by a switching or terminal crew under the jurisdiction of a yard master and we contend that the movement from Chicago Heights to points in the Switching District is a switching movement. (Tr. 530.) The movement from the next point South of Chicago Heights would be handled

in local freight trains. Between Chicago Heights and the Chicago District, it is handled in switching trains. In my Exhibit No. 33, the maximum haul for 35 stations is 33.8 miles all located on the Baltimore & Ohio Chicago terminal and the Chicago and Eastern Illinois and the switching charges apply to stations on all other lines besides those named, for the connecting line and would be ½¢ higher. The maximum haul might be more than 33.8 miles but in Witness Vivian's Exhibit No. 11, I believe the average shown for those stations was about 22 miles. (Tr. 531.)

The Chicago, Milwaukee & St. Paul reaches Chicago Heights but it does not handle local freight between Chicago Heights and the Chicago Switching District. It operates over the Baltimore & Ohio Chicago Terminal. It does not handle any freight from Chicago Heights. It is handled over the Baltimore & Ohio Chicago Terminal and under its contract with that road, it cannot handle freight from Chicago Heights into the switching district. (Tr. 532.) On movements of traffic between points in the Chicago Switching District, the maximum distance in some instances would be just as great or greater than the distance from Chicago Heights. (Tr. 533.) The Baltimore & Ohio Chicago Terminal has been considered as the rate making line between Chicago Heights and points in the Chicago District for many years, and I do not understand [fol. 648] that it publishes rates either locally or jointly with connecting lines serving the Chicago District that are different from Chicago Heights than from points within the Chicago Switching District. (Tr. 533-534.) On a movement originating on the Chicago Heights Terminal routed to a point on the Chicago & Eastern Illinois under the rates proposed, it would be a two line movement. (Tr. 534.) My statement that the Baltimore & Ohio Chicago Terminal is the rate making line between Chicago Heights and the Chicago District, is based on the information gathered since I have been in Chicago Heights and in going over the rate history for a great many years. (Tr. 534.) The rates on the Baltimore & Ohio Chicago Terminal and on the Chicago & Eastern Illinois between those points are the same now. During the period covered by Mr. Webster's testimony, there were times when rates between Chicago and Chicago Heights on the Chicago & Eastern Illinois were lower than they were on the Baltimore & Ohio Chi-

cago Terminal and in some instances they were higher. The Baltimore & Ohio Chicago Terminal has carried its rates for a great many years on exactly the same basis as the rates in the Chicago Switching District. I do not have in mind any instances where the rate was set or made by the Baltimore & Ohio Chicago Terminal and had to be met by the Chicago & Eastern Illinois. (Tr. 535.) My distinction between a road haul movement and a switching movement is that a switching movement is one of cars that move under switching rates, handled by a switching or terminal crew under the jurisdiction of the yard master. That is not true of a line haul movement. (Tr. 536.) If switching rates were extended to the point next South of Chicago Heights, it would not make the same as switching move unless actually handled as such. Whether the service is switching service of a transfer service, or a line haul serv- [fol. 649] ice, the limit of the switching district should begin and end where the switching movement starts. (Tr. 537.) I had no particular station in mind as the one directly South of Chicago Heights, but as I understand the switching service ends at Chicago Heights. (Tr. 538.) If the switching service ends at Chicago Heights, it would not make any difference what the station was. Beyond the Chicago Heights, it would be a road haul movement because there is no switching service South of Chicago Heights. (Tr. 539.)

F. H. Rutherford, called in behalf of respondent carriers, being sworn, testified as follows:

Direct examination by Richmond, representing respondents:

I am Superintendent of Chicago Terminals for the Chicago & Eastern Illinois Railroad and have jurisdiction over that portion of the railroad from Chicago to Chicago Heights and to about ten miles South, beyond Chicago Heights; have had charge of this terminal work for about 20 years and know how freight traffic is transported between Chicago Heights and points within the Chicago Switching District on the Chicago & Eastern Illinois. There is no difference now in the way traffic is handled to and from Chicago Heights and the Chicago Switching District or moving between points within the Chicago District. (Tr.

540-541.) Our assembling yard for receipt of cars from connecting lines is at Dolton, about 18 miles South, where we get cars from the various belt lines. We do not reach much of an industrial district inside of Chicago. At Dolton, we separate the cars and those for our switching district in the city are handled by a transfer switching crew from Dolton to 33rd St., a distance of 15 miles; cars des- [fol. 650] tined Chicago Heights are handled by a switching transfer crew between Dolton and Chicago Heights. A number of years ago this was not true as we then moved cars between Dolton and Chicago Heights in road trains. This change was partly brought about by the fact that the Chicago & Eastern Illinois Railroad bought the Chicago Terminal Transfer Railroad. (Tr. 541.) Steger is the first station South of Chicago Heights and about two miles away. (Tr. 542.) We handle traffic between Steger and the Chicago Switching district in the same manner we handle that moving between Chicago Heights and the Chicago Switching District. At the present time the service between the Chicago Heights and the Chicago Switching District is a switching service. It is performed by switching crews; formerly as I explained, it was a road haul service. The difference in the character of service is quite material. (Tr. 542.) This change as a regular thing became effective August 1st, 1927 but gradually the practice had grown, being brought about by operating conditions and the amount of business, etc. Tr. 542.)

My statement, Mr. Commissioner, was that we handled traffic at Steger in the same manner that we do at Chicago Heights, but I did not say because of that, Steger is within the Chicago Switching District. My statement merely covered the conditions of operation.

Commissioner Campbell:

Q. Well then if the work is performed in the same manner and the conditions are the same, of course if Chicago Heights is put within the Chicago Switching District, Steger must be, must it not?

A. I would not want to say as to that, Mr. Commissioner. (Tr. 543.)

[fol. 651] Cross-examination by Mr. Walter, representing shippers:

From a freight standpoint, Chicago Heights includes the yard limits there which takes in Steger. The Steger Piano Company is at present the only industry operating at Steger and we have done switching at Steger for a good many years with the engines from Chicago Heights. There is another town a mile and one half South of that: Crete, where conditions are entirely different. Our engines do not go there and it is a road haul proposition. There are no large industries at Crete. If a large industry was located there, I would not care to express an opinion as to the propriety of extending the switching service to that point because it is a very wide question. A road haul movement for a short point involves a lack of tonnage from the time the car is set out to the destination of the train. A road haul crew moves from one terminal to another. A switching crew always goes back to its own terminal. It never gets very far away. (Tr. 546.) The next large industrial town South of Chicago Heights on our railroad is Hoopeston, about 75 miles. I have jurisdiction over road haul movement to a point about 10 miles South of Chicago. Primarily, I am in charge of the Chicago District and I do not pay much attention to the road trains that come in and go out over my district. (Tr. 547-548.) The fact that the name Steger is applied to the Piano works does not, so far as the service is concerned, change the situation at all. Steger is served just like others at the terminus at Chicago Heights. I cannot say that would be true if a large piano factory were started at Crete. My distinction between switching and road haul service is that the switching service the crew starts out and performs its work and comes back to the starting point, while in road haul services, the [fol. 652] crew goes to the nearest division point, stops and perhaps comes back the next day.

By Mr. Orcutt:

Q. Therefore, is it true then that your idea of switching services as contrasted with road haul services is switching services can only extend so far, that the crew may start out and go to their limit and still have time to get back to the starting point within their 8 hour trick.

A. Well, that is about as good a definition as I know of. (Tr. 549.)

There are two small industries at Bernice, and the distance from there to a point in Chicago Switching District.

is no greater than from Chicago Heights and if you would ask me that question most anywhere else, Mr. Commissioner, I would say that I did not know of any reason why Bernice should not have the same rates as Chicago Heights; the conditions are the same. I can only tell about conditions, Mr. Commissioner. (Tr. 549.)

But the conditions again are entirely different. The industries at Bernice may be served by road trains; a road train starting for Chicago to a terminus 125 miles away, setting off 10 cars at Bernice, necessarily would be short 10 cars in its tonnage for the rest of its journey, entailing a material loss in train haul; and if Chicago Heights gets Chicago Switching District rates and an industry at Bernice claims discrimination and demands the same treatment, the question goes right back as to whether the service can be most economically performed by switching service or road haul service, bearing in mind that switching service is quite expensive but goes only as far as the service. Whereas, the connection with road haul service, a car may be hauled 10 miles and the train proceed, with train crew getting its pay, but still it is short as many cars as it sets off at the short terminus. (Tr. 550.) Referring to the matter of Steger, which is not included in the extension to Chicago [fol. 653] Heights, I do not know what answer we can make as to Steger, but the conditions at Steger being what they are and the same at Chicago Heights, I do not know what the difference might be. (Tr. 551.) My understanding is that Steger is not included in the Chicago Heights switching district. (Tr. 552.) Road haul crews handle switching [fol. 654] at the smaller stations under switching rates that may apply as between two industries at that station or something of that sort. Such switching is usually handled with the local road haul crew; that is quite a different service from the through train service. It is perhaps not perfectly clear as to how we handle this business. We have two classes of road haul crews. One is the local crew with districts usually short, running from 40 to 75 miles, which is paid so much per day, so much per hour; through road haul train crews are paid by the mile and their business is to haul trains from one terminal to the other, usually not less than 100 miles apart. These crews do but a limited amount of switching. Requirements of the labor unions prevent these crews from doing local switching. The local crews, which are in fact switching crews with terminals at

two different places, do that sort of switching. (Tr. 555.) The actual facts in any case have got to govern. There is character of service and volume of business as well as other facts to be considered in determining the extent of any switching district. It is not the competitive conditions at particular points rather than the class of train crew handling the particular service that determines the extent of any switching district. (Tr. 555.) We try to keep our operating conditions down to a sensible basis and do the work as it ought to be done. (Tr. 555-556.) As to the work that might be done at some isolated station in the country in the way of switching, it is not comparable with conditions that apply at Chicago or any other large city. The mere fact that service is rendered by a switching crew, even of itself does not determine the extent of any switching district. All conditions that have to do with the switching service should be considered. (Tr. 556.) The Hamilton Piano Company and the Baldwin Piano Company are lo- [fol. 655] cated at Chicago Heights, but it is all the same outfit, though they may be separately listed. (Tr. 557.) I do not know whether both plants have the same rates to Chicago, as I know nothing about how the rates are made. That is not my business. (Tr. 557.)

We apply the rule of reason as to the distance we go in performing switching service. We always go as far as we think we should. Naturally I think Chicago Heights is as far as we should go in this matter, but I do think we should go there. The large number of industries and large amount of local business makes it undesirable to handle it back and forth in road trains, because the loss in road train haul would be too great beyond that point. No hard and fast rule can be laid down. Every case must be studied by itself. (Tr. 558.) Under operating conditions at Chicago Heights I would not want to go any further with a switching engine on the Chicago & Eastern Illinois, because it would not have any cars to handle that would make it worth while. If you have one or two cars to set out that train haul loss may be taken from a road train, but with 8, 10 or 15 cars we cannot afford to take that loss on your road train haul, if you set them out with a road train crew. Therefore you run a switch engine. Distance is not the

controlling factor; all conditions must be taken into consideration. (Tr. 559.)

R. A. BARLOW, recalled as a witness by Mr. Cardy.

Direct examination:

I am train master of the Baltimore & Ohio Chicago Terminal Railroad Company and am familiar with operating conditions on that road. It is a switching line in the Chicago terminal, and Chicago Heights is its southern termi- [fol. 656] nus. The service performed by the Baltimore & Ohio Terminal handling a car from the north side to Chicago Heights is the same as handling a car to any other point in the Chicago switching district. (Tr. 560-561.) Comparing a movement of a car from Barr yard to Chicago Heights with one moving to East Chicago: East Chicago cars move from a point in Chicago through Barr yard to East Chicago. A car originating in Chicago for Chicago Heights goes through Barr yard, where it is classified into a Chicago Heights run. We are strictly a switching road and have no road haul crews. (Tr. 561.) We do not switch for any of the industries at Chicago Heights; that service is by the Chicago Heights Terminal Transfer Railroad. (Tr. 562.)

Cross-examination.

By Mr. McElroy:

There is a large stone quarry located just north of Chicago Heights served by our line. At the present time we handle from 25 to 35 cars daily out of that quarry. (Tr. 562.)

E. L. MAYNARD, called by Mr. Cardy, was sworn and testified as follows:

Direct examination.

By Mr. Cardy:

I am traffic manager of the Brownell Improvement Company located at Thornton, Illinois. I have prepared some statements showing movements of stone between points in

the Chicago switching district. I represent in this proceeding the Dolese & Shepard Company, on the Chicago & Illinois Western Railroad; and Federal Stone Company, on the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt, both industries being at McCook, Illinois; A. C. O'Laughlin Company at Bellwood, Illinois, on the Indiana Harbor Belt, Chicago & Great Western, and Chicago, [fol. 657] Aurora & Elgin; Peoples Crushed Stone Company, McCook, Illinois, on the Indiana Harbor Belt; Superior Stone Company, McCook, Illinois, on the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt; Brownell Improvement Company, located at Thornton, Illinois, on the Baltimore & Ohio Chicago Terminal, Chicago & Eastern Illinois, Chicago, Milwaukee, St. Paul & Pacific, and Illinois Central. Those stone companies are all located in the Chicago district. My statements show movements of crushed stone between points in the Chicago switching district during the years 1925 and 1926. (Tr. 564.) Crushed stone rates are included in this hearing. (Tr. 565.) My first exhibit is No. 36, covering crushed stone movement during the year 1925 from the six companies named to points in the Chicago switching district. The first page is entitled "Pressed Stone Shipped During 1925 from Thornton, McCook and Belleville." (Said exhibit received and marked "Ex. No. 36, Witness Maynard,") (Tr. 566.) Fifty-three and six-tenths per cent of our entire shipments for the year moved to points within the Chicago district. Local shipments in the Chicago district amounted to 37.31 per cent for a one-line movement; two-line, 60.9 per cent, and three-line, 1.79 per cent. (Tr. 566-567.) Page 2 of the exhibit shows number of cars of crushed stone shipped from those 3 producing points to local destinations, with recapitulation for joint hauls, and joint hauls are named on page 3. (Tr. 567.) Page 4 shows earnings on 25 shipments to local destinations in the district. The average distance for local and joint hauls was 19.3 miles. Average weighted local haul was 14.4 miles, and average haul was 22.2 miles; and average weighted haul for local and joint was 19.3 miles. (Tr. 567.) To compute average weighted haul of shipments of each company I figured the route of [fol. 658] movement; did not use short line mileage, which would have made a shorter average haul. The next columns show earnings per ton mile, per car mile under present rates, with total revenue. (Tr. 568.) Page 5 covers joint

hauls. Page 6 shows the separation of local hauls on intrastate traffic, and page 7 shows intrastate joint hauls. Page 8 shows interstate local and joint hauls. (Tr. 568.) The recapitulation on page 6 shows 20,616 cars moving intrastate, and page 8 shows 3,239 cars interstate, both local and joint hauls. (Tr. 569.) Ex. 37 is similar to No. 36, but covers 1926 shipments of the same companies (Ex. 37 introduced in evidence, page 569); with the addition that pages 9 to 12 show earnings on the proposed rates that are under suspension.

The intrastate shipments for 1926 local and joint hauls were 24,257 cars. (Tr. 569.) Interstate shipments were 2,959 cars. The service in handling intrastate and interstate shipments is practically the same and the rates the same except on the Indiana Harbor Belt, interstate rate on crushed stone is 10¢ higher. (Tr. 570.) Destinations on interstate traffic are entirely different from state destinations in the Chicago Switching District. The average haul shown in the exhibit is the actual weighed average (Tr. 571.)

W. J. Womer, called as a witness, was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am traffic manager of Consumers Company, an Illinois Corporation, producing, selling and distributing crushed stone, sand, and gravel, with stone quarries at McCook, and Lemont and sand and gravel pits at Algonquin, all in Illinois. (Tr. 572.) McCook is located on the Atchison, Topeka & Santa Fe, Baltimore & Ohio, Chicago Terminal, Chicago & Illinois Western and Indiana Harbor Belt; Lemont is on the Chicago & Alton and is also served by the Chicago and Joliet Electric Line; another stone quarry operated at Ives, Wisconsin, is located on the Chicago and [fol. 659] Northwestern and is also served by the Milwaukee Electric Light & Power Co., an interurban railroad. Algonquin is on the Chicago & Northwestern Railway, and our sand and gravel pits are operated at South Beloit, Illinois, on the Chicago & Northwestern, at Beloit, Wisconsin, on Chicago, Milwaukee & St. Paul, at Ginger Hill, Indiana, on

the New York Central, and Dune Park, Indiana, on the Indiana Harbor Belt. Have been engaged continuously since 1904 in the handling of sand, gravel and crushed stone in the Chicago Switching District and from points outside to points therein. (Tr. 573.) The map, Exhibit No. 38, prepared by me shows relative location of sand, gravel and crushed stone plants in the Chicago Switching District, which was offered and received in evidence, marked, "Exhibit 38, Witness, Womer." (Tr. 573.) This map is drawn to scale and shows principal sand and gravel pits, stone quarries in Southern Wisconsin, Northern Illinois and Northern Indiana; sand pits shown by circles and stone quarries by squares. (Tr. 573-574.) The shaded section to the left of the word "Chicago," is the Chicago Switching District. (Tr. 574.) The squares enclosing x's show stations at which quarries within the Chicago district or adjacent thereto, served by rail transportation, are located. There are stone quarries located closer to the heart of town but not served by railroad, the output being handled by motor truck. In addition to the companies represented by Mr. Maynard, I speak for the A. C. McLaughlin Company, the Federal Stone Company, Superior Stone Company, Peoples Stone Company, Dolese & Shepard Company, Brownell Improvement Company and Consumers Company, and which includes all crushed stone plants in the Chicago district served by rail except the small operation of the Riverside Lime & Stone Company. Generally speaking, all crushed stone plants within the district are on the outer rim, and almost entirely on switching lines. (Tr. 574.) [fol. 660] They are all served by switching lines, but in addition some are served by trunk lines; but quarries proper are on switching lines, the great bulk of stone traffic moving via switching lines. (Tr. 575.)

Ex. 39 prepared by me deals with the rate situation on sand and gravel. (Tr. 575.) (Said document was received in evidence and marked "Ex. No. 39, Witness Womer.") (Tr. 575.) Page 1 of the exhibit shows local rates, crushed stone from Thornton and McCook, Illinois, via Baltimore & Ohio Chicago Terminal Railroad to Illinois destination. The first rate, 16 cents per ton, effective January 1, 1908, with subsequent changes shown from left to right, and the 50 cents at the extreme right hand is the present rate, with the 60 cent rate being the one under suspension. The first rate history shows only infrastate rates

to points in Illinois in the district. Below are shown rates to Indiana points within the Chicago switching district. The separation made there was because from time to time interstate rates differ from intrastate rates; exceptions are noted by appropriate reference marks explained at the bottom of the sheet; tariff authority for each change being shown immediately under measure of rate.

Page 2 shows local rates, crushed stone, via Chicago & Eastern Illinois from Thornton, Illinois, to Chicago, and is self-explanatory.

Sheet 3 shows local rates, crushed stone, via Indiana Harbor Belt from McCook and Bellwood districts to Illinois intrastate destinations in the Chicago switching district. (Tr. 576.) Below the intrastate rates is the South Chicago rate as well as interstate rates to points in Indiana within the Chicago district. (Tr. 576.)

Sheet 4 shows history of freight rates on crushed stone from various quarries within the district to various industrial deliveries via connecting lines therein. (Tr. 577.) Rate basis 1 in the first line is explained under caption [fol. 661] "Explanation," as meaning interchange direct covering two-line service between industries in the district and is the so-called "All-Commodity" basis applicable to traffic within the districts. Rate basis 2 explains use of one intermediate carrier, or a three-line haul. Rate basis 3 is similarly explained. (Tr. 577.) The general interstate basis for stone movements between points in the switching district is 50 cents for one- and two-line hauls; intrastate, 40 cents per ton, single-line; 50 cents, two-line, and 60 cents, for three-line. (Tr. 577.) The rates proposed are 60 cents one-line, 70 cents for two-line, and 80 cents for three-line, which is set forth on the following page of the exhibit.

(Document marked "Ex. No. 40, Witness Womer," was offered and received in evidence.)

Said exhibit shows total movement of crushed stone from the 7 stone quarries within the Chicago switching district for the year 1925, and was compiled in collaboration with Mr. Maynard, who showed the figures in his Ex. No. 36 for 6 companies. (Tr. 578.) The exhibit covers all carload shipments of stone from quarries within the Chicago switching district to private sidetrack deliveries therein, showing 11,774 in one-line movements both state and inter-

state in the Chicago switching district, representing 35.1 per cent of the total movement of 33,623 cars, with an average haul of 17.4 miles. Weighted average and the freight revenue per car and per car-mile are shown separately for local hauls, joint hauls, and assembled into a total or average for the entire district, state and interstate movements being combined. (Tr. 579.) Separating interstate and intrastate shipments, 22.66 per cent were interstate. The division as to local and joint hauls interstate is approximately the same as on the total, the exact percentage of local being 35.38. (Tr. 580.) Illinois intrastate shipments [fol. 662] represented 77.34 per cent of the total, local hauls being 34.91 per cent. The average haul on Illinois intrastate traffic is 18.9 miles, combining local and joint hauls; the average in interstate shipments is 33.8 miles. Average local haul intrastate was 13.9 miles, and interstate 29.1 miles, shown by the exhibit. (Tr. 580.) This exhibit shows movement only of stone originating within and destined to points within the Chicago switching district in 1925, and the detailed figures were procured from each producing company.

In examining Consumers Company shipments I found that the short hauls approximated 65 per cent of the distance via route of movement for the year 1925. After examination of shipments embraced in carriers' cost study, and after being shown Oliver's Ex. 13, I believe there is a greater range between the short route and the distance via route of movement, taking the district as a whole. (Tr. 581.) I refer to the shortest routes via which the traffic could actually move. My Ex. 41 covers the same matters as Ex. No. 40, except the former is for the year 1926. (Said document offered and received in evidence and marked "Ex. No. 41, Witness Womer.") The percentages, however, differ from those in 1925. (Tr. 582.) For 1926 local hauls were 38.42 per cent. Intrastate shipments for that year represented 46.97 per cent of total movement. Local hauls interstate were 41.15 per cent of total interstate movement. Illinois intrastate shipments represented 83.03 per cent of the total movement within the district. Local hauls Illinois intrastate were 37.86 per cent of total intrastate movement. (Tr. 583.) Exhibit 41 in addition shows per car revenue and per car mile revenue under proposed rates, suspended in I. & S. Docket 2,900 and Illinois

Commission Docket 17,250. (Tr. 583.) Sand and gravel pits adjacent to Chicago were first established in the Fox River Valley, the territory roughly between Crystal Lake [fol. 663] and Elgin, Illinois. With increased consumption, additional plants were established at Joliet and then others in the Rock River Valley shown at extreme left of map, Exhibit 38, roughly described as between Janesville & Rockford. (Tr. 583.) Various rates were published by the carriers serving these origin points, resulting in disagreements aired in complaints adjudicated by the Interstate Commerce Commission and the Illinois Commerce Commission as to these identical questions. (Tr. 584.) The Commission established sand and gravel rates within the Chicago District in Docket No. 17,817 and crushed stone rates between points in the district in I. & S. 2,649. The commission approved an adjustment of sand and gravel rates on the basis worked out between shippers and carriers, (Tr. 584) which provided a rate of 65¢ per ton from points within a radius of 50 miles from Chicago to points within the district for a single line via the short line, designated zone 1; 5¢ per ton higher from zone 2, embracing points 51 to 100 miles from Chicago and 5¢ per ton higher from zone 3, covering 100 to 150 miles and for off line deliveries an arbitrary of 20¢ per ton was approved in addition to single line rates. (Tr. 585.) Generally speaking, the basis for stone movements within the Chicago Switching District, intrastate 40¢ per tone for 1 line, 50¢ for 2 lines and 60¢ for 3 lines; and interstate, 50¢ per ton for 1 and 2 line hauls and 60¢ for 3 lines, and that relative adjustment was passed upon by the Commission in the proceeding I mentioned.

Gravel competes with crushed stone in the Chicago district but sand does not. Between gravel and crushed stone, the competition is keen because both are used in common for many purposes. Gravel can be used as well as crushed stone for general concrete work, for paving work and for [fol. 664] building construction. (Tr. 586.) Sand and gravel do not always take the same rates. The former being lower than the latter. They are generally spoken of together and frequently sand, gravel and stone are spoken of together and we have sand rates on a different basis than gravel rates. (Tr. 587.) Indiana pits were developed subsequent to Illinois and Wisconsin pits. A heavy volume of gravel moves to the Chicago market annually but I can-

not give the aggregate figure. The decision in Docket No. 17,817 gives figures as to volume of movement.

There are sand and gravel pits located on practically every trunk line entering the Chicago District and the movement is usually via a one line to which the single line rate applies. The movement of stone from a point within the Chicago district to the same destination generally takes a two line rate; (Tr. 588) because practically all stone producing plants in the Chicago district are located on switching lines, while sand and gravel plants are located on trunk lines; and stone generally has to compete by a two line movement with a 1 line movement on gravel. (Tr. 588-589.) If the increase proposed becomes effective on stone, it will either transfer stone tonnage to gravel pits or will require stone quarries to deliver products within the Chicago switching district by motor trucks and by water. Stone production is more expensive than gravel but the delivered price must include transportation charges. We have found in many instances that we can make cheaper trucking deliveries of our products within the district, using water transportation, than by all rail transportation. Any increase in switching rates naturally increases the delivered price of commodities produced and consumed in the district. (Tr. 589.) We use water transportation. (Tr. 590.) From examination of our records, it costs from 2 to 3½ times as much to produce a ton of stone as it does [fol. 665] to produce a ton of gravel. Worked out in percentages, lowest gravel cost compared with lowest stone cost, the ratio is 38.35 per cent; comparing highest cost gravel with highest stone cost, the ratio is 29.24 per cent; comparing lowest cost gravel with highest cost stone, the ratio is 47.4 per cent. Comparing highest cost gravel with lowest cost stone, the ratio is 59.14 per cent. In cents, this means a higher cost of stone averaging about 15c to 20c per ton. (Tr. 590.) In addition to gravel competition from zones 1, 2 and 3, crushed stone competes in the district with slag, a by-product or refuse of steel plants, crushed, sized and prepared. Increase in slag rates are proposed. Off grade and off size stone is frequently used for filling purposes and comes in competition with all kinds of plant rubbish and refuse material. (Tr. 591.)

There is a proposal to increase road haul rates from zones 1, 2 and 3 on sand and gravel, as well as on stone.

(Tr. 591.) We meet water competition in the Chicago switching district. Sand suckers operate out of the Harbor of Chicago. They suck sand and gravel from the lake and haul it to Chicago, their boats having machinery permitting unloading to the docks from which it is trucked. In many instances it is loaded into cars and shipped from one corner of the district to some other location in the district. Several of these operations are at South Chicago. (Tr. 592.) Approximately 500,000 tons of stone moves annually from Lemont, Illinois, via water, to the Chicago switching district. We meet competition of stone producing plants located in the Chicago switching district, not located on railroads and two competitors have very large quarries of that character. There has been a great num-
[fol. 666] ber in past years. Crushed stone, such as produced in the Chicago switching district is worth approximately 80¢ per ton, but is sold by cubic yard; 1 cubic yard weighing 2,500 pounds. (Tr. 592.) In 1925, average loading of crushed stone per car was 53.74 tons and in the year 1926, 53.47 tons. Document offered was received in evidence marked "Exhibit No. 42, Witness Womer." (Tr. 593.)

Exhibit 42 tabulates rates on crushed stone between points within the Chicago district, originating at quarries on the Baltimore & Ohio Chicago Terminal and Chicago & Illinois Western and Indiana Harbor Belt, destined to private side track deliveries on connecting lines showing present rates per net ton and those proposed. (Tr. 594.) The first column shows rate of 50¢ per ton on Baltimore & Ohio Chicago Terminal applicable to 27 delivering lines. The 60¢ rate applies to 8 lines taking the column on proposed rates at 70¢ applying to 27 lines and the 80¢ to 8 lines. The last column, Indiana Harbor Belt, the 50¢ rate applies to 31 lines and the 60¢ to 4 lines. The proposed rates are in the same ratio. (Tr. 594.)

There are a large number of industries on the Chicago & Northwestern and the Chicago, Milwaukee and St. Paul railroads and rates shown in present and proposed columns do not apply to all deliveries on those railroads. (Tr. 594.) There are points on those lines taking rates uniformly 10¢ per ton higher than the general basis within the district. On the Exhibit, the 50¢ present rate is shown applicable to Chicago and Northwestern stations except Irondale, but

60¢ per ton applies to a number of stations. The 70¢ proposed rate is shown but to the outlying stations in many instances it will be 80¢. No crushed stone plants are on the Chicago & Northwestern Railway in the Chicago switching district. The lowest possible rate under the increase proposed applying to crushed stone from plants within the [fol. 667] Chicago switching district to an industry on the Chicago & Northwestern would be 70¢ per ton; (Tr. 595) and to some outlying industries on that line would be 80¢ per ton, while generally speaking, the present rate is 50¢, but to the outlying districts, under the proposed 70¢ stone rate, the rate on gravel from plants on the Chicago & Northwestern within 50 miles of Chicago would be 65¢ per ton and that rate would apply from stone quarries located on the Chicago & Northwestern within that distance. Based on my experience, if this proposed increase applied to destinations on the Chicago & Northwestern, there would be no stone movements to those destinations without a corresponding increase in gravel rates from points on that line and other trunk lines to those destinations. We would bring stone on road haul movement from Ives, on the 70¢ rate to give that plant an added load factor, in preference to paying 70¢ to switch stone on a two line haul between points in the Chicago switching district. Ives is in Wisconsin Zone 2, approximately 65 miles from Chicago, just North of Racine. (Tr. 596.) The 80¢ per ton value of stone applies at the quarry. Sand and Gravel are worth less and sell for less. These prices are F. O. B. shipping point. We take this figure of 80¢ and add the freight and sell for whatever that may be; that is what we have been doing in the past. (Tr. 597.) Under the tariff, the 50¢ rate applies to the Chicago & Northwestern and the Milwaukee and the present rate is not 60¢ under the tariff. Under the proposed tariff it is carried as a two line haul. It is not a 3 line haul because the Illinois Central operates the Chicago & Illinois Western. (Tr. 598.) Galligan's Tariff, I. C. C. 89, carries rate basis one from Chicago & Illinois Western quarries for deliveries on all but 3 railroads, through which joint rates are published in the tariff, appearing on page 10. (Tr. 598.) My exhibit 43 sets forth present and proposed, local and proportional rates on [fol. 668] crushed stone for McCook, Illinois, via Indiana Harbor Belt, to local stations thereon in Illinois. Offered

and received in evidence, "Exhibit 43, Witness Womer." (Tr. 598.)

The Exhibit shows distances, rates per ton, present and proposed, revenue per car, present and proposed, revenue per car mile, present and proposd, based on average weight of 106,100 pounds. This merely for comparative purposes to test out the reasonableness of the proposed rates. (Tr. 599.) Exhibit 44 is a similar statement applicable to interstate destinations, making the same relative showing as Exhibit 43. The document was offered and received in evidence, marked "Exhibit 44, Witness Womer." (Tr. 599.) Exhibit 45 shows rate adjustment on sand, gravel and crushed stone from origin points shown on Exhibit 38, to Chicago, which was offered and received in evidence marked "Exhibit 45, Witness Womer." (Tr. 599-600.) Am familiar with the movement of crushed stone from McCook to points within the Chicago district and with the sand and gravel movement, outside district points at the 65¢ rate. (Tr. 600.) Comparing operating conditions on movements of sand and gravel from zone 1 to the Chicago switching district with crushed stone movements from McCook to the same destinations, when it comes to the topography of the country, curves, grades, etc., the conditions within the Chicago district are generally more favorable than the conditions connected with the road haul movements. Shipments from zones 1, 2 and 3 entail considerable haul before they get to the Chicago switching district. (Tr. 600.)

At Algonquin, Illinois, we have a sand and gravel plant on the Chicago & North Western Railway 48 miles from Chicago, and from there a shipment would move to Chicago via either the Wisconsin or the Galena division. At the [fol. 669] plant the empty cars would be spotted for loading, while at stone quarries cars are merely shoved in and the industry performs its own spotting. In fact, it does all of its own intraplant switching without any allowance therefor. (Tr. 601.)

Comparing operating conditions on movements of sand and gravel from Zones 1, 2 and 3 with the movement of stone within the district, and using Algonquin, Illinois, as illustrative, sand and gravel shipments would be handled from the pit to Crystal Lake, there classified and put into a road-haul train and hauled to break-up yard on the outer

rim of the Chicago district, which on the Galena division would be Proviso, an interchange point with the Indiana Harbor Belt through which the latter could interchange traffic with the Chicago & North Western on shipments of stone at quarries within the Chicago district. (Tr. 610-611.) From Proviso yard to destination point of shipment on the Chicago & North Western Railway the transportation conditions would be identical with those having points of origin and destination within the Chicago switching district, but there would be approximately 25 miles greater haul on sand and gravel from Algonquin to Chicago than on stone moving within the Chicago switching district. (Tr. 611.) There are other differences besides distance; the grades, curves and general conditions. Conditions within the Chicago switching district are more favorable than on road-haul between origin points referred to and the Chicago switching district. There are many more operations at a stone plant than at a gravel plant. (Tr. 612.) At a quarry there is stripping for removal of over-burden to make the stone accessible; the drilling of holes for explosives to break up or loosen stone; picking up stone by steam shovels and loading to quarry cars, and transportation therein to the crushing plant. Then follow various crushing operations, the initial and the reduction crush-[fol. 670] ings and then washing and screening, making the commodity then ready for loading in railroad cars. (Tr. 612.) Removal of over-burden is required at sand and gravel operation. Then the movement to the washing plant for washing and screening and thence loading cars. The quarry operation is much more expensive and more dangerous in many respects. Quarry investment is much greater. More machinery is required and property values are higher by reason of proximity to large metropolitan areas than in the case of gravel pits. (Tr. 613.)

The purpose of Ex. 45 is to set forth rate adjustments on sand and gravel and crushed stone in the territory shown in Ex. 38, and to set up a yardstick to test the reasonableness both of present and proposed rates on stone within the Chicago switching district. (Tr. 613.) The revenue per car on Ex. 45 is figured on 50 tons and is approximately the average per car weight of sand and gravel. Approximately 6½ million to 7 million tons of sand and gravel move per year into the Chicago market form origin points shown in Ex. 45. (Tr. 614.)

Ex. 46 shows freight rates on miscellaneous commodities between Chicago and Joliet, excepting items marked with an asterisk, which apply in one direction only. The balance of the exhibit is self-explanatory. The transportation conditions from Joliet to Chicago as compared with the Chicago switching district are substantially the same as stated regarding conditions between Algonquin and Chicago. The purpose of this exhibit is to compare revenue on traffic from Joliet with the rates proposed in this proceeding and to test out the reasonableness of the rate level. (Tr. 614.)

Ex. 47 shows miscellaneous commodity rates between Fox River Valley points, Rockford, Freeport and Sterling on the one hand, and Chicago on the other, with distance, [fol. 671] weight, earnings per car, and per car mile. (Said documents referred to were offered and received in evidence and marked "Exs. Nos. 46 and 47, Witness Womer.") (Tr. 615.) In this exhibit we used minimum weight because with one or two exceptions, pig iron and scrap, for instance, the actual weight would not exceed the minimum. (Tr. 615.) On traffic from Elgin and from Joliet to the Chicago switching district in each instance the rates provided for a movement through the entire Chicago district. They do not merely cover movements to the switching boundary. They cover the through movement. (Tr. 616.) With one or two exceptions these rates apply to any delivery in the Chicago district that is available under provisions of Agent Galligan's Tariff 20 Series. (Tr. 616.)

My exhibit 48 is a tabulation of miscellaneous commodity rates between Chicago and Waukegan, Kenosha, Racine and Milwaukee, Wisconsin, and is submitted for the same purposes as Exs. 46 and 47. (Said exhibit was offered and received in evidence and marked "Ex. No. 48, Witness Womer.") There is a movement on these rates. (Tr. 616.)

Generally speaking, rates on sand, gravel and stone are on the same level. The Elgin, Joliet & Eastern Railway published rates from and to points on its line on approximately the same level as crushed stone rates in the Chicago District, but for greater distances. The Elgin, Joliet & Eastern Tariff I. C. C. 2107, shows a rate of 50 cents per ton on sand and gravel from Spalding, Illinois, to local stations on its line for distances as far as 81 miles, and in the opposite direction the same level is carried for a maximum distance of 35 miles.

From Plainfield, Illinois, the same carrier names a 50-cent rate northbound for 64 miles, and southbound for 53. The entire territory between Waukegan, Illinois, and Kavanaugh, Indiana, is blanketed on the 50-cent level from [fol. 672] both Spalding and Plainfield. (Tr. 617.) There is afforded a yardstick, because these rates were voluntarily established, by which to test the reasonableness of rates within the Chicago switching district or road-haul rates from zones to the Chicago switching district. (Tr. 618.) In I. and S. Docket 2649, involving stone rates within the Chicago district, Ex. No. 10 therein shows average freight revenue $16.46 per car on some 8 or 10 commodities moving via the Indiana Harbor Belt for the month of September, 1924. The total study covered 3226 cars, average revenue $16.46 per car, and in it were 678 cars of stone, average revenue $23.47 per car. The exhibit was offered by the Indiana Harbor Belt in that proceeding. (Tr. 618.) The per-car revenue on stone traffic in the switching district is about $8.00 or $9.00 higher than the average on other commodities, and is far greater than the average per car on all classes of traffic handled by the Indiana Harbor Belt, its annual report for 1926 showing $8.16 average revenue per car. (Tr. 619.) That figure is contained in the report to the stockholders for the year ended December 31, 1926, page 16. On the same page it shows $8.35 average per-car revenue for 1925. (Tr. 619.) Based on the business of my own company since the adjustment in Docket 17817, there has been an increased consumption of both stone, sand and gravel in the Chicago district, but sand and gravel increase has been more pronounced than in stone consumption. Since the time referred to stone shipments increased 10 per cent in 1926 over 1925, with the sand and gravel increase 24 per cent. (Tr. 619.) The total investment in the stone industry in the Chicago district for the seven companies represented by me is approximately $8,500,000. (Tr. 620.) If the proposed rate increases become effective, based on 1926 tonnage the increased revenues will be $382,935.71, or 40.85 per cent. If we could save these increased charges we [fol. 673] could pay about 4 per cent on the industry investment. (Tr. 620.)

There has been a very pronounced increase in trucking of stone in the Chicago district direct from the quarries, and a substantial increase in volume of water-borne stone. (Tr.

620.) Stone has been trucked from the quarries clear down to the loop district. Under present tariffs applying within the Chicago district the shipper can designate only the originating and delivering roads, and the way traffic is handled is purely a matter of operation which the carriers decide. However, a shipper can use only the railroad on which he is located and the delivering carrier serving the consignee, but an industry served at point of origin by more than one railroad produces various factors which may determine the railroad that the shipper will use. In our business it is the rate. (Tr. 621.) If a two-line haul is available we would not use three lines with a higher rate than for two lines, and with a single-line haul available we would not use a two-line haul. The second consideration is the car supply, and third, time required in transportation, and the amount of carrier solicitation is considered.

Stone business is attractive to the roads serving the quarries, and keen competition exists in the solicitation of business. (Tr. 622.) Since costs are figured on the car as a unit, it seems to me that using per-car revenue as a basis would be more equitable as between commodities than a 100-pound basis. (Tr. 622.) Zoning the district would create discrimination, because industries in the same line of business are located on the north side, the west side or the south side, and in many cases right in the loop. The dealers in sand, gravel and stone are all over the district, and a line could not be drawn anywhere without creating discrimination against certain localities and as between certain carriers. (Tr. 623.)

[fol. 674] My opinion is that a fair charge under the present arrangement to the stone producers would be for a 100,000-pound car, marked capacity, $20.00 for a single-line; two-line, $25.00, and three-line $30.00 per car. Many commodities load less than crushed stone, sand or gravel. Giving consideration to charge per car, it would require application to cars 80,000 pounds and 60,000 pounds marked capacity. Using the $20.00 per car as basis, it could be scaled down to apply to 80,000 pounds and 60,000 pounds marked capacity cars, and scaled up from the one-line basis to two and three or more lines. This would result in the aggregate in higher revenues per car than were proposed in the tariffs under suspension. In those 3 cents was named for a single-line haul applying to 60,000-pound minimum, which would produce $18.00 per car. On the same

minimum the 3½-cent rate would produce $21.00 per car and the 4-cent rate for three-line hauls would produce $24.00 per car. (Tr. 624.)

Referring to Mr. Oliver's Ex. 13, page 11, there is shown crushed stone movement from Superior Stone Company to R. Chisholm via Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal, a movement that cannot now be made since Supplement 16 to Galligan's I. C. C. No. 63 became effective July 27, 1927; such two-line movement being prohibited by the Baltimore & Ohio Chicago Terminal where both consignor and consignee are served by the same railroad.

Subsequent to July 27, 1927, the movement would be as indicated on page No. 12; a shipment from Federal Stone Company to R. Chisholm Material Company. The Federal Stone Company and the Superior Stone Company are separated by 47th Street, so the distance is identical. The 63-mile loaded haul shown on page 11 would be reduced to 31.04 miles under the required routing shown at page 12. (Tr. 625.) It would be practical to move this shipment via [fol. 675] another route with the haul of 13.3 miles being via Baltimore & Ohio Chicago Terminal McCook to Bellwood, Chicago & Great Western Bellwood to Forest Park, for redelivery to the Baltimore & Ohio Chicago Terminal for further movement from Forest Park to 48th Avenue; a feasible route. (Tr. 625.) The connection exists and the Chicago & Great Western is a tenant of the Baltimore & Ohio Chicago Terminal, using the latter's rails from Forest Park to the passenger station. (Tr. 626.) Forest Park industries and the Baltimore & Ohio Terminal passenger station are shown as industries on the Chicago & Great Western for business to and from Chicago via the Chicago & Great Western. Other carriers are tenants of the Baltimore & Ohio Chicago Terminal, and in view of the joint facilities and numerous operations in the Chicago district, it would seem reasonable for the Chicago & Great Western to accord to the Baltimore & Ohio Chicago Terminal trackage rights between Bellwood and Forest Park, a distance of 2.8 miles. From McCook to Bellwood is 6.9 miles; Bellwood to Forest Park 2.8 miles; Forest Park to 48th Avenue 3.6 miles; making 13.3 miles. (Tr. 626.)

Page 14 shows shipment from Consumers Company quarry at McCook to McClintic-Marshall Company, 87th Street, on the Belt Railway, the McCook quarry being served by the Indiana Harbor Belt and Chicago & Illinois Western Railway. The shipment from McCook via the latter and the Belt Railway of Chicago to the consignee named would involve a haul of 18.9 miles as compared to the 46.6 miles shown by route of movement. The route mentioned exists. (Tr. 627.)

Page 27 of Ex. 13 shows car shipment of ice from Consumers Company, Englewood, to Illinois Central freight house at South Water Street. Instead of moving from [fol. 676] Consumers Company plant to Englewood, thence south to Colehour and west to Fordham and north over Illinois Central from that point to South Water Street, the shipment could move from Englewood to 55th Street, thence north over the Pennsylvania's line to St. Charles Air Line at 16th Street, of which the Illinois Central is a part owner, and thence east over the St. Charles Air Line to the Illinois Central and thence north to South Water Street. This movement would be about one-quarter of the distance via that which this loaded car traveled. (Tr. 627.)

On page 37 are shown car shipments from A. C. McLaughlin quarry, Bellwood, to Central Lime & Cement Company at Cragin, via Indiana Harbor Belt and Chicago & North Western. The Indiana Harbor Belt and the Chicago & North Western connect at Proviso, but the tariff covering these shipments and the one under suspension in this proceeding restrict movements between industries on the Indiana Harbor and those on the Chicago & North Western under the 2½ cent rate to interchanges via Wood Street. The shortest workable route would be from quarry at Bellwood 1½ miles north to Proviso, thence east by Chicago & North Western to 40th Avenue and thence to Cragin, a haul of 11½ miles, or ⅕ the distance the shipments actually traveled. (Tr. 628.)

During the test period we kept, at such of the Consumers Company retail yards in Chicago as were located on the test roads, a record with reference to the service performed in handling switching. (Tr. 628.)

The record was kept to determine length of time serving industries in placement of loaded cars and the removal of the empties. I have here record of one year, showing ar-

rival of engine at 10:25 A. M., the placement of 11 cars, and departure of the engine at 10:35 A. M., or 10 minutes for the placement of 11 cars. This was October 18, 1927. Illinois Central engine 256, and the service performed at [fol. 677] South Water Street. On same date the same engine, at 3:15 P. M., entered the yard, placed 4 cars and left 5 minutes later. The next morning engine 309, at 9:15 A. M., placed 3 cars and departed at 9:30; and on the same day the same engine, at 2:40 P. M., placed 5 cars and departed at 2:45 P. M. The same day at 8:50 P. M. engine 282 placed 4 cars, departing at 8:55 P. M., and the same engine at midnight placed 7 cars and departed at 12:05 A. M. (Tr. 629). October 20th engine 285 placed 3 cars at 9:10 A. M., departing at 9:15 A. M.

In view of the expense set up in the carriers' study for industrial switching, and based on the service at this yard, it seems, on performance outlined, industrial switching charges in excess of $1.00 per car, are very much out of line and abnormally high. Out of our McCook quarry we will average approximately 125 cars per day, some days 150 cars. To the yards of building material dealers stone moves in 2- or 3-car lots. To our own distributing yards the shipments move 5 to 20 cars per day. (Tr. 630.)

As to car detention at the stone quarries, almost without exception the cars are loaded and billed the same day they are furnished. We investigated car detention at quarries in transit and at destination on all shipments in the months of August and October, 1927, those being the test periods, at certain of our yards. Allowing an entire day between placement of order for empty and the furnishing of car, and one entire day for loading, the transmission of billing instructions to the billing station, and taking actual time in transit between point of origin and placement at unloading point, the total elapsed time was 4.34 days at one yard and 6.53 at another yard. The average time in transit is considerably in excess of minimum time. The minimum time is substantially one-half the total time; and at one of our yards the average time elapsing between [fol. 678] ordering the empty car and releasing the same at destination was 3.69 days, and at another yard 4.48. The cost study shows 7 and a fraction days for a two-line haul. My illustrations involve two-line hauls. (Tr. 631-632.)

The only commodities moving in as large volume as crushed stone to and within the Chicago switching district would be interplant movements of coal and iron ore at the steel plants; and where freight is paid I know of no commodity that moves in such large volume as stone to and within the Chicago district, or that pays higher revenues per car and is one of the lowest-grade commercial commodities moving within the district. (Tr. 632.) My understanding is that Docket 20006, being heard with Docket 19610 and I. and S. Docket 2900, involves application for reduction in slag rates. I may desire to offer testimony in Docket 20006, but that will depend entirely on the character of the testimony introduced therein by complainants. Slag rates at the present time are on the same level as crushed stone, which commodities are competitive, and a lower basis is sought on slag in the district. (Tr. 633.) The stone quarries are located on the outer rim of the Chicago district and require rail transportation. The territory is a considerable distance from any congestion, but those quarries have to compete with wagon quarries located closer to the heart of the town, which do not require rail transportation. The wagon quarries set the price so far as stone is concerned, subject to the influence of single-line gravel competition from Zones 1, 2 and 3. There is a very substantial stone movement from quarries on the outer rim of the district to retail yards 5 or 6 miles in the district, and such stone is delivered to the retail yards by truck in many instances. (Tr. 634.)

[fol. 679] Cross-examination.

By Mr. Walter:

We have business to points on the Chicago, Milwaukee & St. Paul, Chicago & Northwestern, the Chicago Great Western, and the Soo line at outlying stations taking the ½ cent arbitrary over the general rate. Under the so-called Evanston line haul rate we buy substantial quantities of coke shipped from the by-products plant on the Chicago Short Line to yards in the vicinity of Rogers Park. The Evanston rate applies under the intermediate application. The rate is $1.01 per ton, whereas just a short distance south the rate is 60 cents per ton. The additional haul is several miles. (Tr. 635.) The navigable waters of the

Chicago district can be indicated from Exhibit 15 which shows water routes. Freight may be moved by water as far North approximately as Lawrence Ave., indicated by the intersection of lines I and 6 (Tr. 635) for light draft boats. Lake steamers have repeatedly handled cargoes to Fullerton Ave., indicated by lines J and 8. The distance depends on draft of the boat. A water movement is contemplated to Weber, indicated on the map at intersection of lines H and 2. On the South branch of the Chicago river, my company operates a fleet of barges and tugs between Lemont, about 26 miles Southwest of Chicago, a point beyond this map, and various deliveries in Chicago. Lake steamers can operate in the South branch of the river as far as 35th St. and lighter draft steamers a greater distance. Coal is brought in cargo loads to Hedstrom-Schenck dock at 35th St. and has been for a number of years. (Tr. 636.) In the South Chicago district, freight may be handled by water to points inside the coast line, via lake steamers up or down Calumet river as you choose to go. The boats go inland from South Chicago quite a distance. (Tr. 637.) A harbor extension is proposed to make Lake Calumet a seaport. The Chicago and Northwestern has grain elevators at Irondale which would be available to water transportation upon completion of the harbor development. Lake vessels can move as far as [fol. 680] 118th St. south of Irondale. The new Ford plant is on the turning basin. There is a canal system which permits water movements from Indiana Harbor to inland points of coal, iron ore and stone by lake steamer, distance about 3 miles. They move beyond the lines of the railroad along Lake Michigan and through the line on the map marked "Canal", toward East Chicago. (Tr. 637.)

Large consumers of stone that could use the water movement direct from quarry to their plants without use of rail lines, are Inland Steel Co., Federal Furnace Co., Youngstown Sheet & Tube Co., Wisconsin Steel Co., and Illinois Steel Co., both at Gary, as well as South Chicago. There are numerous other large consumers which could be served by water as well as civic projects and building development projects that could also use water transportation. (Tr. 638.) We have a distributing plant that could be served by water to the branch and thence by truck serve additional territory beyond that which we now reach.

We have such branch yard on the water front and utilize it at the present time as well as other locations that we could utilize in the future. We handle cement by truck. (Tr. 638.) We use our own trucks from Buffington, Indiana, in competition with the present rate because more economical than handling by rail. The truck movement is a very substantial amount, but I would prefer not to quote figures. I am satisfied with the present rates of sand, gravel and stone as published, aside from the ½c arbitrary and the line haul rates; but if an increase in the general level of rates is to be granted, then I think they should be published at least on crushed stone, sand and gravel, on a per car basis; I would even extend that to all commodities. All transportation of crushed stone by rail is in railroad owned equipment. (Tr. 639.) I do not have available the [fol. 681] exact figures here but I would say that about 75% or 80% of the stone tonnage handled within the district now moves by rail, even though we could move the tonnage cheaper by truck or water, because we are cooperating with the city administration in an effort to eliminate congestion on the streets. The public interests would suffer seriously though our private interests might be better served if the tonnage was transferred from rails to trucks. (Tr. 640.) At the present time there is no stone movement by barge between points in the district. We had at our McCook quarries a water connection, discontinued by reason of local conditions so that the first water point beyond the district from which stone is handled by boat is Lemont. The water connection at McCook can readily be reestablished.

Our dock distributing yards have rail facilities. Stone from Lemont to one of our dock yards is not reshipped by rail. It is delivered from the dock yards after receiving it by water or by motor truck to the point of consumption. The dock yards are served by the Chicago, Milwaukee & St. Paul and the Chicago & Northwestern, and they are located at Deering station, known as yard No. 66, and served jointly by the 2 roads mentioned. (Tr. 641.) Goose Island Yard is served by the Chicago, Milwaukee & St. Paul and another at Lock Street that can be served directly by the Chicago & Alton. The first two dock yards are on the North branch of the Chicago River. Weber is shown on the map, Exhibit No. 15, at the intersection of lines H & 2.

I prefer not to state the contingency involved in the contemplated barge transportation to Weber station. There is rail movement to Weber at the present time. It is served by the Chicago & Northwestern Railway. (Tr. 642.) My testimony covers crushed stone only in so far as movements between points in the Chicago Switching District are concerned. My Company handles a great deal of [fol. 682] sand, and gravel, as well as crushed stone, but my testimony is connected with crushed stone in the district and has nothing to do with the sand and gravel movement within the district. (Tr. 643.) The reasons given for not changing our crushed stone rates are competition of sand-suckers, stone quarries exclusively served by wagon and movement of crushed stone by water, and the competition with gravel moving from towns outside of Chicago in Illinois, Indiana and Wisconsin. (Tr. 644.) The level of gravel rates from the zones would probably be of more importance than any of the other factors. (Tr. 644.) The gravel rates were recently approved by the Commission in Docket No. 17,817 and with relation to the rates within the district and our shipments of crushed stone and gravel from Joliet to Chicago. The Joliet rates are now pending before the Commission in Docket No. 19,557, and is primarily a discrimination case in which a proposed report has been published and the case argued. (Tr. 645.) The car rate of $20.00 suggested by me for a single line haul was based on 100,000 pounds and compared that car rate with the proposed rate based on 60,000 pounds showing the $20,000 figure to be $2.00 greater than the proposed 3c rate applied to the 60,000 pound minimum for a one-line haul and said that rate could be scaled down as the minimum decreased. Scaling down from 100,000 pounds, I would suggest $16.00 for an 80,000 pound car, $12.00 on a 60,000 car for a single line haul; scaling the $25.00 charge on 100,000 pound car to 80,000 pounds, would say $20.00, and on a 60,000 pound car, I would say $15.00 for 2 line hauls; scaling the $30.00 charge to an 80,000 pound car I would say $24.00 and $18.00 for a 60,000 pound car for 3 line hauls. My proposition would involve both increases and reductions, but have not tested it by application to [fol. 683] the size of cars involved in district movements because those facts were not available to me. The figures of $16.00 and $12.00 applying to the 80,000 and 60,000 cars

respectively would mean reductions under the rates proposed. (Tr. 647.) But $20.00 is an increase and applied to open top car movement with practically no 60,000 cars in that service and but very few 80,000 pound cars therein, the average in the open top car would be at least 100,000 pounds if not greater, as new open top cars will load 140,000 pounds and upwards. (Tr. 648.) The car rate applied to the 100,000 pounds would not be to the advantage of the man having a commodity loading to that capacity over the shipper loading 60,000 pounds at the $12.00 rate, which in my opinion would take care of the lighter loading commodities, but you could grade it up above the 100,000 pounds just as well, to take care of that, (Tr. 648) and I would not object to that. (Tr. 649.) The figures proposed are higher for the 100,000 car than those proposed by the carriers on the 60,000 pound basis, but figuring 50 tons, the 100,000 pound car which we would expect to load to capacity, the proposed rate is 60¢ per ton, which would make $30.00 per car and in that sense my proposal is less than what the carriers propose. (Tr. 649-650.) The present switching rates on stone were fixed in I. & S. 2649. The I. & S. case was consolidated with another one. The present 40¢ single line rate on stone is the same as on other commodities via railroads that publish 40¢. (Tr. 650.) The cost figures given by me apply only to the production of my company. (Tr. 650.) A cubic yard of stone weighs about 2,500 pounds and a cubic yard of gravel about 3,000 pounds. The Chicago & Illinois Western connects directly with 6 lines, I believe. There is no difference in the intrastate stone one line rate in the district and the joint haul rate in the district except 10c via [fol. 684] certain roads. That is not true as to stone or gravel coming in. (Tr. 651.) On gravel coming from outside the district on a two line haul, it would pay a differential but the stone in competition with the single line gravel is a 2 line movement. In the 10% increase in stone shipments mentioned, I was talking about rail shipments exclusively in that comparison. We do not always handle shipments by water or by truck because it is cheaper than rail movement because of the reason given in answer to Examiner Faul and because the question of load factor must be considered. We must consider car supply. There are physical limitations, we have break downs and many

other conditions to contend with, all of which influence our determination as to method of moving our traffic and where from. (Tr. 652.) My intimation was that if rates were increased, we would be forced to make more of our shipments by truck and by water. There are a number of different reasons for not using trucks, even though more economical. You can load a 50 ton car of stone in much less time than loading 50 tons of stone on a number of trucks and if our business at any one of the quarries was handled exclusively by truck, we would not be able to produce in a day or a given period of time the volume of tonnage that we are able to produce through shipping by water or rail and as production increases in volume, your cost per unit increases. (Tr. 653.) Referring to Exhibit 13, page 37, I understood the cost study showed actual route of movement and my comment was directed to rearranging junction points through which traffic now moves and much shorter hauls would be possible. I am fairly conversant with the service conditions involved, if the shipment referred to on page 37 of the exhibit had been delivered to the Chicago & Northwestern at Proviso and then having it turned back or delivered to [fol. 685] Cragin as compared with the way the shipment actually moved. I do not know what the cost figures would be to handle it via the route suggested, but cannot conceive the cost being as high as via the route the shipment moved. It does not seem reasonable to me. (Tr. 654.) I did not give more weight to distance than to other cost factors in moving the shipment. (Tr. 654.) The spread between distance via the route I suggested and route of movement is so great that in my mind there could be no question as to the saving that could be accomplished by making a change in the present route. (Tr. 655.) In using the shorter route, I cannot conceive of any necessary increase in force because the new freight terminal of the Chicago & Northwestern has just recently been opened at Proviso. There is an adequate force, in my opinion, at that point, to handle an increased volume of business and a force at 40th St., at the present time that could handle that volume of business; (Tr. 655.) and over the routes I suggest, would take it away from the congested area of Wood street through which it now moves and put it in open area.

I think there should be an all commodity basis of rates in the district and that our commodity loading heavier and

moving in large volume sometimes in train-load lots should not be treated differently than a single shipment. (Tr. 656.) At the car rate of $20.00 proposed for 100,000 pound car, we would probably load to 110% of marked capacity, (Tr. 656.) but my proposal is to apply the $20.00 regardless of the weight loaded in it. Some railroads have a 10% overload limit and others do not. If we trucked from the quarries to the delivery points we would put an additional number of trucks on the road and if instead of transportation by barge we trucked directly to point of consumption, we would increase congestion. As to failing to make shipments by water, because of less cost, we must give con- [fol. 686] sideration to the load factor at the various plants. At the plants shipping by water, we might also have orders for down state shipments which would move out by rail. It would necessitate a rearrangement of our entire structure to change over night. We have one plant shipping extensively by barge, (Tr. 658.) and a very substantial portion of its output moves by barge. An increase in water shipments from that particular plant will result in cessation of rail shipments and necessitate an increase in our crushing facilities if we convert that plant to supply water movement would require additional capital investment which we desire to avoid.

Redirect examination:

To handle our entire production at any one plant by truck, if we quit shipping by rail and move the entire stone output by truck would require a considerable additional investment. (Tr. 660.)

F. D. McElroy was called in behalf of intervenors and was duly sworn and testified.

I represent the Whitaker-Greer Fire Proofing Co., operating a hollow building tile plant at Chicago Heights, Illinois.

The Hobart case which has been referred to was a formal complaint claiming rates from Hobart, Indiana to points throughout the Chicago switching district were unjust and unreasonable and unduly preferential in favor of Chicago Heights in violation of Section 3 (Tr. 661) and in violation

of section 13 of the act, in that it was claimed that the Chicago Heights rate was so low as to cast a burden upon Interstate Commerce. The preferential rate complained of was the 50¢ switching rate applying from Chicago Heights to points within the Chicago Switching District, via the Baltimore & Ohio Chicago Terminal, which is a strictly [fol. 687] switching road with a terminus at Chicago Heights and the rate complained of has been maintained since 1911 and was exactly the same basis applied from other stations on its line in the Chicago Switching District. (Tr. 662.) Chicago Heights is not asking for a lower basis of rates. We merely ask to be left as we are. (Tr. 662.) We pointed out in the Hobart case that the rate from Hobart to Chicago of $1.05 per ton was the local rate of the Pennsylvania Railroad and not concurred in by the Baltimore & Ohio Chicago Terminal, and we answered the discrimination charge by showing under an alternative order entered by the Commission, the Baltimore & Ohio Terminal had no power to remove the discrimination either by reducing the Hobart-Chicago rate nor did the Pennsylvania have power to remove it by increasing the local of the Baltimore & Ohio Chicago Terminal. In addition, we showed the large volume of traffic moving in switching service between Chicago Heights and points in Chicago District over Baltimore & Ohio Chicago Terminal by a train leaving East Chicago in the morning moving to Chicago Heights with inbound traffic picking up outbound loads at Chicago Heights the same day and delivering them at Barr Yard for connecting lines or for deliveries on the Baltimore & Ohio Chicago Terminal during that day. (Tr. 663.)

No evidence was offered in the original record in the Hobart case as to transportation conditions surrounding movement of traffic from Hobart, Indiana, to points in the Chicago switching district, other than one general statement made by traffic witnesses for the Pennsylvania. The only plant of consequence at Hobart is that of the National Fireproofing Company, the complainant in that case, which also has a plant at Pullman, Illinois, in the Chicago switching district. (Tr. 664.) Pullman, Illinois, has the same basis of rates from that plant throughout the Chicago district as applies from that plant throughout the Chicago district as applies from Chicago Heights, which complainants

have had since 1911, when the Lowrey agreement was entered into. The situation is shown on page 1 of my Ex. 49. [fol. 688] (Said exhibit received in evidence and marked "Ex. No. 49, Witness McElroy.") This shows the rate maintained by the Baltimore & Ohio Chicago Terminal from 1911 to date is on same basis as switching rates applicable within the Chicago district, which applies from Pullman and the plant of the National Fireproofing Company at that point. (Tr. 664.) Whenever a change in the Chicago Heights-Chicago switching district rates has been made by the Baltimore & Ohio Chicago Terminal a like change has been made from Pullman via the Pullman Railroad serving the National Fireproofing Company at that point, applicable to connecting line deliveries throughout the switching district. The exhibit shows Hobart has never been on the Pullman basis or the basis applying at Chicago Heights. The first Chicago Heights-Chicago rate was $5.00 per car, but in two or three years it was increased to $5.50. It was published in 1900 and maintained by the Baltimore & Ohio Chicago Terminal until 1911, when the Lowrey agreement was entered into. (Tr. 665.) The Chicago & Eastern Illinois Railway maintained its contract rate of $5.50 until the year 1917, so that it had been in effect for at least seventeen years via the route of the Chicago & Eastern Illinois for single-line deliveries. The rate of 40 cents per ton was published May 1, 1917, since which time the Chicago & Eastern Illinois Railway Company has ceased to be a factor in handling Chicago Heights switching district traffic, and that traffic has been handled via the line of the Baltimore & Ohio Chicago Terminal until very recently. (Tr. 666.) General Order 28 increased all brick and hollow tile rates 2 cents per hundred pounds, and the Chicago & Eastern Illinois applied the 40-cent per ton increase to its brick and hollow tile rates moving from Chicago Heights. (Tr. 666.) Inside the switching district the 40-cent per ton advance was not applied to switching move-
[fol. 689] ment. Those rates were increased 25 per cent. Again the Baltimore & Ohio Chicago Terminal treated Chicago Heights exactly like its industries within the Chicago switching district and applied to the hollow building tile and brick rates a 25 per cent increase, thus maintaining the parity between Chicago Heights and the Chicago switching district. (Tr. 667.) In August, 1920, the Com-

mission allowed a 40 per cent advance in all rates east of the Mississippi River, but the Chicago & Eastern Illinois advanced its rate but 33⅓ per cent, the increase permitted by the Illinois Commerce Commission at that time; but on July 1, 1922, the Illinois Commission permitted the full 40 per cent advance, resulting in a ton rate of $1.01. In October, 1922, as a result of the Commission's decision in the General Brick case, 68 I. C. C. 213, the Chicago & Eastern Illinois again revised its rates, but the Commission stated in that case that switching rates from points just outside established switching districts of large cities were not involved. (Tr. 667-668.) Baltimore & Ohio Chicago Terminal rates had always been considered as Chicago's switching district rates, and following the Commission's decision last referred to, that carrier did not revise its rates between Chicago Heights and the Chicago switching district, nor were the brick and hollow building tile rates revised between those points. As just stated, the Commission said rates on hollow building tile in Chicago Heights were not involved in that case. It could not enter an order because they were not involved. The Commission excepted them from the general investigation. I was talking about the General Brick case. (Tr. 668.)

Chairman Campbell: I have been waiting for the witness to get to the point. I supposed this was all leading up to something, but so far nothing has been given except a history of the Hobart case. (Tr. 669.)

[fol. 690] The Witness (continuing): On August 1, 1927, the examiner who heard the Hobart case found in his tentative report that the rates from Chicago Heights——

Mr. Davis: We object to what the examiner found, as there was a decision by the Commission. (Tr. 670.)

Chairman Campbell: What the examiner found would not be pertinent, and I do not see the pertinency of the decision itself. You can refer to it by reference and in your brief, but there is no necessity for your reviewing the case here.

The Witness (continuing): As a result of the Commission's decision in the Hobart case the Baltimore & Ohio Chicago Terminal increased its hollow building title rate to $1.05 per ton and on common brick 84 cents per ton, and

these rates were suspended by the Commission before they took effect. (Tr. 671.) On August 1, 1927, the Chicago & Eastern Illinois asked the Commission's authority to reduce its hollow building tile rate, then $1.05 per ton from Chicago Heights to Chicago, to the basis in effect from Pullman, namely, 50 cents per ton for comparable service; (Tr. 671) which was granted under special permission No. 82760, which thus placed Chicago Heights brick and tile rates via the Chicago & Eastern Illinois Railway on the same basis as rates on lines serving Pullman. (Tr. 671-672.)

Sheet 2 of my Ex. 49 shows the same basis of rates applying on hollow building tile from Chicago Heights to connecting line deliveries in the Chicago district as from Pullman, the basis in effect since 1911.

Page 3 of Ex. 49 is an excerpt from Saur's Exs. 7 and 8, showing brick and tile handling cost between Chicago Heights and points in the Chicago switching district, as compared with points in the district. The operating cost of $19.43 for single-line hauls, or for joint-line hauls via [fol. 691] the Baltimore & Ohio Chicago Terminal and Chicago Heights Terminal Transfer Company, includes not only the cost via the former but the $6.00 tariff charge of the latter. A cost study of the Chicago Heights Terminal transfer Company traffic was not made. (Tr. 672.) The Illinois Commerce Commission made such examination of the Chicago Heights Terminal Transfer Company costs on September 25, 1923, covered by Ex. No. 1, Witness Tuthill, in Illinois Commerce Commission Docket No. 12595, which showed for year ending 1920, average cost per loaded car on that terminal railroad was $3.02. Deducting $6.00 from $19.43 and adding $3.02 to reflect actual cost on the Chicago Heights Terminal, the cost of moving traffic between Chicago Heights and Chicago switching district is not greater than in the Chicago switching district, but in fact is less. (Tr. 673.) If the $1.05 rate is ordered established by the Interstate Commerce Commission from Chicago Heights to Chicago, and the Pullman rates within the district remain as they are, Chicago Heights will suffer the same discrimination that Hobart complained of in its rate to Chicago. The National Fireproofing Company owns the only plant at Hobart and owns the plant at Pullman within the Chicago switching district. In the original case Mr. Councill testified and this was back in 1925. (Tr. 673.)

Mr. Davis: That is objected to.

Chairman Campbell: The objection is sustained. Let us not go into that. The question here is whether Chicago Heights should be granted Chicago switching district rates. You have gone into your cost study, your movement, and all things which you say justify giving Chicago Heights the Chicago switching district rates. Let us not go into that other case in this one. (Tr. 674.)

The Witness (continuing): The mileage from Pullman to points throughout the Chicago switching district is not [fol. 692] materially different than mileage from Chicago Heights to points throughout the Chicago switching district. As to mileage Pullman can claim no different treatment than Chicago Heights. If the General Brick case is to furnish basis for level of rates on brick and hollow tile within the Chicago switching district, mileage from Chicago Heights would justify a 90-cent per ton rate to all deliveries south of an east and west line drawn through 63d Street from Lake Michigan to the boundaries of the Chicago switching district. (Tr. 675.)

Cross-examination.

By Mr. Cardy:

I understand the National Fireproofing Company at Pullman is operating today and producing hollow building tile. (Tr. 675.) There has been no changed condition from the time the Hobart case was tried and up to date with reference to the operation of the Pullman plant. The plant is now working and was when the Hobart case was tried, though they claimed it was going to be closed within a year.

Cross-examination.

By Mr. Pierce:

I am advocating the exact basis of rates from Chicago Heights to points throughout the Chicago switching district as the Commission fixes for application within the Chicago switching district, whatever that basis may be. The Hobart case is the only one except the Berenice case that changed the Chicago Heights rate basis to points within the Chicago district. (Tr. 676-677.)

W. M. COUNCILL, called and duly sworn, testified as follows:

Direct examination:

Am traffic manager of National Fireproofing Company, with plants at Hobart, Indiana, and Pullman, Illinois, serving the Chicago market. (Tr. 677.) In 1924 my company filed complaint with the Commission against the $1.05 rate published by the Pennsylvania Railroad on hollow building [fol. 693] tile carloads from Hobart, Indiana, to points in the Chicago switching district. It was assigned as Docket 16563 and was consolidated with Dockets 16116 and 16392 and heard May 13, 1925, and decided January 20, 1927. The Commission among other things found that rates of 50 cents and 60 cents per ton were published on articles in the uniform brick list from Chicago Heights to points in the Chicago switching district, both interstate and intrastate and were unduly preferential.

Mr. McElroy: I object to this testimony, if the Commissioner please.

Chairman Campbell: Go ahead. He is not saying a thing more than you did.

The Witness (continuing): Were unduly preferential to Chicago Heights and unduly prejudicial to Hobart, Indiana, and Chicago Heights carriers were ordered to cancel those rates on or before April 5, 1927, and apply rates not lower than those contemporaneously published from Hobart, Indiana. (Tr. 678.) The carriers complied with the Commission's order after the latter had denied a petition of the Chicago Heights interests to reopen. The Commission later suspended the tariffs of the carriers establishing rates ordered in the Hobart case, and the Hobart situation was assigned for disposition in I. and S. Docket 2900. On June 2d the Commission denied our petition to vacate its suspension order which carried both Dockets I. C. C. 16563 and I. and S. 2900. We are here today to call to the Commission's attention its decision in Docket 16563 and related cases, and to answer any question that the Commission or anyone else may propound regarding carrying out the Commission's order. In asking equalization of rates from Hobart to Chicago versus Chicago Heights we are not asking for more than carriers are asking for industries at Chicago Heights, that is, an

equalizing of commercial opportunity or recognizing com-
[fol. 694] petitive conditions. (Tr. 679.) The tile plant at Chicago Heights has tied their situation in with the general investigation of rates from Chicago Heights. There are many more industries in Chicago Heights than at Hobart. We do not think all industries at Chicago Heights should be given equal rates with competitors in the Chicago district while one industry at Hobart be denied the same treatment accorded one industry at Chicago Heights with which it competes in the same Chicago district. (Tr. 680.) The Chicago Heights plant has always been in a position to give consumer, contractor or dealer lower prices equivalent to their freight rate advances.

A 4-inch partition tile weighs 16 pounds and they are sold per thousand, which weighs 16,000 pounds or 8 tons. Chicago Heights pays 50 cents per ton single-line and 60 cents for two-line hauls, 27 miles via the Chicago & Eastern Illinois and 30 miles via the Baltimore & Ohio Chicago Terminal. Hobart pays $1.05 for 35 miles, a difference of 55 cents and 45 cents per ton respectively or an average difference of 50 cents per ton. This difference on a thousand pieces of tile represents $4.00. (Tr. 680.) Jobs such as hotels, apartment and office buildings use 300,000 of these partitions, and no contractor would pass up $1200.00 saving on a single item. An equalization of rates between these plants would correct that condition. If such conditions are equalized by the equality of freight rates where justified the brick and tile manufacturers will quit running to the railroads asking reductions in their rates and revenues. (Tr. 681.) We have no quarrel with the Chicago Heights industry, but we object to its competitive advantage in the Chicago market. We do not want brick and tile rates adversely affected by what may be found to be proper competitive rates on iron and steel or other
[fol. 695] commodities manufactured at Chicago Heights. We do not think the tile plant at Chicago Heights should endeavor to get into the district on rates that might be proper on iron and steel or some other articles. (Tr. 681.) The principle established in Docket 16563 was a parity of rates Chicago Heights versus Hobart and Chicago, the relationship being more important than the level in a short-haul market. We are satisfied with the hollow

building tile rate Hobart to Chicago at any level up to $1.05 as a maximum, if the rate is fixed from both points. If Chicago Heights is in the Chicago switching district the situation would not be equalized by Hobart being brought into switching limits, as Gary is between Hobart and the Chicago district and we understand that Gary is not to be brought in the Chicago district. If so, there would be no possibility of bringing Hobart into switching limits, and the situation could not be equalized if Chicago Heights is brought into the Chicago switching district. (Tr. 682.) If the Commission should find a rate less than $1.05 per ton is justified on hollow tile from Chicago Heights to the Chicago district, then we respectfully ask that it give carriers the positive order as to the manner in which the rate from Hobart is to be equalized, in order to remove the discrimination the Commission found in Docket 16563, and so modify its findings in that case to such degree as may be necessary to accomplish that. (Tr. 683.) Inquiry among the carriers, at least the Pennsylvania, which serves Hobart, does not indicate it would be their purpose to give Hobart the same rate to the district as Chicago Heights, if the latter is given the Chicago district rates. Docket 16563 and the cases with which consolidated involve rates on tile into Chicago, which rates into the Chicago district have been from time to time built up by the Commission and the Chicago Heights plant is the only one not yet tied to this structure; and any advantage in rates from Chicago [fol. 696] Heights involves the entire rate structure on brick and tile into the district. (Tr. 684.) The order in the Hobart case has not been modified, but the question whether Chicago Heights shall have the district rate is involved in I. and S. 2900, and depending on I. and S. 2900, it may be necessary for the Commission to take some action in the Hobart proceeding. (Tr. 685.) But what was the question is also involved before the Illinois Commission in 17250 and perhaps in 17269 in the petition filed with it asking suspension of tariffs on intra-state traffic. (Tr. 685.)

Reference has been made to the plant now owned by this company at Pullman as competitive with the tile plant at Chicago Heights. The plant is on the Pullman Railroad 13 miles from the downtown loop district. Two-line rates have always applied from that plant, as we are located

on an industrial railroad, with no other rates from points on that line except to industries having private sidings in the district. The Pullman Railroad has direct connection with the Illinois Central at Kensington, the Chicago, Rock Island & Pacific, and the Belt Railway at Pullman Junction. All movements over other lines are three-line hauls. (Tr. 686.)

Ex. 16 in Docket 16563 shows charges on cars to 49 team tracks in the city of Chicago. In 44 instances the rates from Pullman to these deliveries were higher than from Chicago Heights to the same or adjacent deliveries. (Tr. 686.) The other 5 the rates from Chicago Heights and Pullman were identical.

Mr. McElroy: I renew my objection to any testimony referring to rate statements introduced in the original case unless put in evidence here.

The Witness (continuing): That was a matter of record. It has been inferred that our charges from Pullman are lower than they are from Chicago Heights, and that we have an advantage over the Chicago Heights plant, which I [fol. 697] am simply endeavoring to show is not the case.

Examiner Faul: You may show what the rates actually are.

The Witness (continuing): Galligan's Tariff 21 covers rates now under suspension, and proposed to increase two-line hauls from 2½ to 3 cents, and three-line from 3 to 4 cents per hundred. (Tr. 687.) The Pullman Railroad's Tariff I. C. 21, 22 and 23 provide through rates to points not covered in Galligan's Tariffs an increase of 1 cent per hundred pounds, the same as the Galligan rates. The Pullman Railroad proposed to increase local rates between industries on its rails and junction points with connections, from 1½ cents to 2 cents.

Taking three typical team track deliveries in Chicago under the proposed increased rates, the rate from Pullman to team track on the Belt at Kenton and Division Streets will be 4½ cents, made up of Pullman 2 cents and Belt Railway 2½ cents. (Tr. 688.) Pullman is treated differently from other plants in the Chicago district because on a terminal railroad, involving an extra charge to all team track deliveries, but we cannot say whether different than plants on the Chicago, West Pullman & Southern, Illinois North-

ern, or the Chicago Junction Railway. What I am trying to show by these rates is that charges from Pullman to these team track deliveries will be higher than the proposed basis of 3½ cents and 4 cents from Chicago Heights. I am not objecting to the proposed rates from Pullman to points in the Chicago district, and did not enter any protest (Tr. 689); but there has been injected in this hearing an attempt to impress the Commission with the fact that the rates from Pullman on tile to deliveries in Chicago are lower than from Chicago Heights, and I feel that it is proper to show that is not true, even though I do not object to the rates from Pullman. (Tr. 690.) I am not [fol. 698] objecting to the Pullman rates as proposed. I am quoting what they will be and how they compare with the rates from Chicago Heights and with what the rates will be from Chicago Heights if that plant rides into Chicago with the other industries. (Tr. 691.) The delivery I referred to results in a 4½¢ rate from Pullman or 90¢ per ton. For Belt Railway delivery from Chicago Heights, the rate would be the same. To team track deliveries on the Baltimore & Ohio Chicago Terminal, the Pullman rate will become 5½¢; 2¢ for the Pullman railroad and 1¢ for the Belt Railway and 2½¢ for the Baltimore & Ohio Chicago Terminal. The movement from Chicago Heights in that case would be via the direct line. (Tr. 691.) Those are Lowrey tariff rates. We have no through rates from Pullman except to industries. All rates from Pullman are made on conibination of these local factors covered by tariff within the district. (Tr. 691.) I think to all team track deliveries the rate is made on combination of each lines charges. The point I make with respect to Pullman vs. Chicago Heights is that the latter is on a terminal railroad. We have to pay an extra charge, which in all cases equals the combination and makes ours greater than the Chicago Heights charge. (Tr. 692.) That advantage results that a single line haul is involved from Chicago Heights, via the Baltimore & Ohio Chicago Terminal which applies the single line rate to its team tracks and we have to use 3 lines to get to the same point. (Tr. 693.) Tile produced at the Pullman plant is not generally accepted among dealers in the general trade and we use it through our own construction department in Chicago which goes to many of the team tracks in the city, depending upon where the brick is. (Tr. 694.) The situation is this, as to Chicago Heights on

[fol. 699] shipments of hollow building tile to points on the Baltimore & Ohio Chicago Terminal, for team track deliver we are required to pay the aggregate sum of each individual line's charges to reach team tracks on that terminal, while the Chicago Heights manufacturer has the opportunity of shipping over a single line at single line basis of rates; and if Chicago Heights is included in the Chicago Switching District, its rates to the industrial deliveries would be identical with those applied from Pullman. (Tr. 695.) If the $1.05 rate remains from Chicago Heights, we would have to the industries, the Lowrey basis of rates, of 2½¢, 3¢ and 3½¢ from Pullman to the same industries. (Tr. 696.) Certain team tracks are shown as industrial tracks, Lowrey Tariff 21, which are open to the public under switching rates, to which we have the advantage of the Lowrey basis from Pullman. Where we would have the advantage over Chicago Heights is if the $1.05 per ton rate becomes effective from that point. Pullman is not receiving any different treatment than any other point within the Chicago Switching District but we have higher freight charges because located on a line involving movement over 2, 3 or 4 lines to the Chicago Switching District. (Tr. 697.)

Mr. Shank: I move that Mr. Councill's testimony as to use his company makes of tile manufactured at Pullman be stricken from the record.

Chairman Campbell: Objection over-ruled.

Cross-examination.

By Mr. Shank:

We have no deliveries on the Pullman railroad, no tile being shipped to that railroad. I do not know whether it has team tracks. We never use them. (Tr. 698.)

Chairman Campbell: As I understand, this witness is not complaining of the Pullman rate, but is here to point out the discrimination which exists between Chicago Heights [fol. 700] and Hobart and with that understanding his testimony was received but not for the purpose of attacking the Pullman rate; the Hobart rate is not involved except as its relationship to the Chicago Heights rate. (Tr. 700.)

Mr. McElroy: Mr. Councill, do you remember at the trial of the case in May, 1925 you testified as follows (Tr. 701):

"We operated at Pullman under certain leased rights which will probably be terminated within the next year by the Harbor Commission. Pulllman will then cease to be a factor within the Chicago district, as there will be no plant there. Therefore, we do not concern ourselves with the adjustment of freight rates from Pullman. We are not making any requests for any change in the rates from Pullman to Chicago."

The Witness: The plant at Pullman originally dredged its clay from Lake Calumet. Owing to certain Harbor improvements contemplated, the city authorities have withheld license which was granted from year to year for the dredging of that clay and we have been compelled to purchase a steam shovel and dredge our clay from the bank of the Lake on our own property to our Kilns. This supply of clay is very limited (Tr. 702-703) and we expect when the Calumet District improvement project goes ahead, our plant will be eliminated from the district. We did not admit the reasonableness of the rates from Hobart to Chicago. (Tr. 704.) Hobart is 9 miles from Clark Junction, the end of the switching limits which is the Pennsylvania's first assembling or classification yards on shipments to Chicago. (Tr. 704.)

Mr. Cardy: Mr. Councill, after the car gets to Clark Junction, 9 miles from Hobart, does it pass through the city of Gary. (Tr. 705.)

Mr. Davis: That is objected to as not an issue in this case.

[fol. 701] Chairman Campbell: The objection is sustained. (Tr. 706.)

J. W. Brown, in behalf of intervenors, was sworn and testified as follows:

Direct examination.

By Mr. Keene:

Am Western traffic representative of the Graselli Chemical Co., of Chicago, Illinois and have been for the past 5 years. 3 years prior to that, I was traffic manager for Roger, Brown Importing Co., and prior thereto, was em-

ployed in the traffic department of the Union Pacific and the Fort Dodge, Des Moines & Southern Railroads. The Graselli Co., is an Ohio Corporation with its principal office at Cleveland, Ohio, (Tr. 707) engaged in the manufacture and sale of chemicals, explosives, acids and other commodities, with plants at various points in the United States, with one at Graselli, Indiana, in the Chicago Switching District, at which various chemicals and acids are manufactured. It is on the Indiana Harbor Belt Railway, Baltimore & Ohio Chicago Terminal, Elgin, Joliet & Eastern, Pennsylvania, and Wabash Railroads. Plant switching is performed by the Indiana Harbor Belt for account of other lines reaching the plant under an agreement between them. From the Graselli Plant to points within the Chicago District, we make carload shipments of sulphuric and muriatic acids in tank cars and in carboys; nitric and miscellaneous acid in box cars; numerous other chemical products and scrap iron, cinders and empty bags. (Tr. 708.) We receive in car loads at the plant from points within the district lubricating oil, anthracite screenings, lumber and box shooks, ammonia, niter cake, zinc; skimmings, lead, steel, wheels, tie plates, barrels and empty carboys, cases and drums. (Tr. 708.) Excepting sulphuric and muriatic acids in tank cars, all these commodities move on the Lowrey switching rate of 2½¢ for 1 and 2 line hauls, 3½¢ [fol. 702] for 3 lines, the latter being ½¢ higher than the Lowrey basis. A rate of 2¢ per 100 pounds voluntarily established by the Indiana Harbor Belt and Baltimore & Ohio Chicago Terminal, applies on sulphuric and muriatic acid in tank cars single line hauls. (Tr. 709.)

We expect to justify the present rates and particularly the 2¢ rate single line hauls on sulphuric and muriatic acid in tank cars; as to other commodities, most of our shipments from Graselli go to our Chicago warehouse for truck distribution. If rates to our Chicago warehouse are increased, we will undoubtedly close it and truck direct from Graselli to the consumers in Chicago. (Tr. 709.) My figures as to shipments were originally made for the first 10 months of 1927 to be ready for the hearing in this proce-ding assigned on January 11, 1928. Our principal interest is in sulphuric acid in tank cars, as we ship but few tanks of muriatic acid though it takes the 2¢ rate. Sulphuric tank shipments move for relatively short hauls over

the Elgin, Joliet & Eastern, Baltimore & Ohio Chicago Terminal, and the Indiana Harbor Belt railroads. (Tr. 710.) Via those lines, the first 10 months of 1927, we shipped 515 cars to points within the Chicago switching district, involving single line hauls only. Average weight 112,491 pounds, average revenue, $22.81 per car, or $3.46 per car mile average haul 6.59 miles. The average mileage is based on 7 cars handled via the Elgin, Joliet & Eastern, actual route 115 cars via Baltimore & Ohio Chicago Terminal, all moving to Standard Oil Company at Whiting; and 393 cars via Indiana Harbor Belt for which mileages were shown in its tariff I. C. C. 706 and in its circular revised December 1, 1924 which shows mileages not contained in the committee tariffs. These mileages were confirmed by the operating department of the Indiana Harbor Belt. All were figured by the exact route of movement and through [fol. 703] yards via which cars were handled. Most of the mileage was figured from our Graselli plant to Gibson, from Gibson back to our plant and from plant to destination which involved a back haul of 2.16 miles though we have handled cars direct to industries on the Indiana Harbor Belt located North of us, without the back haul. (Tr. 711.) Shipments of sulphuric acid customarily load heavier than 112,490 in tank cars as it weights from 14½ to 15.6 pounds per gallon. The gallon weights on other liquids range from 7.2 pounds per gallon to 11.7 pounds. The latter including the syrups. (Tr. 712-713.) The average weight of the 115 tank cars of sulphuric acid via Baltimore & Ohio Chicago Terminal was 152,417 pounds, revenue $30.48 per car. Petroleum weighs 6.6 pounds per gallon. The American Tank line owned and operated by our company furnishes the tank car equipment moving sulphuric and muriatic acids. It has 672 tank cars with an investment of $1,096,793.76 as of January 1, 1927 with maintenance and operating expenses including overhead of 6½¢ per car mile in 1926 and 8.1¢ in 1927. (Tr. 714.) On line haul shipments, carriers pay us 1½¢ per car mile for furnishing this private equipment but on shipments moving from Graselli to points within the switching district, we receive no allowance except from the Indiana Harbor Belt on certain movements at the 1½¢ car mile rate which is grossly inadequate because of the short haul within the district. The furnishing of these tank cars releives the carriers of that invest-

ment and expenses of maintaining them; while as to many other commodities shipped in tank cars, the railroads provide them. (Tr. 714-715.) If we received mileage allowances from all lines, it would amount to 21¢ on the average round trip haul in the district. (Tr. 715.) Sulphuric acid is a low grade commodity loading heavier and not susceptable to loss and damage in tank car shipments. Its [fol. 704] value ranges from $11.50 per ton for 60 degree to $15.50 for 66 degree and $18.50 for fuming acid, F. O. B. works in tank cars. 60 degree usually goes to fertilizer works, iron and steel plants. The 66 degree and fuming acids are used largely by oil refineries. Between January 1, 1926 and December 31, 1927, we did not file a loss and damage claim on sulphuric acid shipped in tank cars moving to the Chicago Switching District. (Tr. 716.) In International Corporation Commission vs. Louisville and Nashville Railroad, 22 I. C. C. 488, the Commission recognized sulphuric acid as a low grade raw material entitled to lower rates than manufactured fertilizer; and in Cannon Manufacturing Co., vs. Director General, 64 I. C. C., 183, the Commission prescribed from Virginia cities to Kanapolis, North Carolina, a rate of $3.10 per net ton. (Tr. 718.) And in Consolidated Southwestern case 123, I. C. C., 203, but two commodities were given lower rates than sulphuric acid in tank cars. (Tr. 718.) In the carriers cost study, sulphuric acid is classified in commodity group 66, Chemicals and explosives. Page 2 of Exhibit 7 shows alleged single line cost of group 66 commodities based on 149 cars moved. Figures furnished by the carrier cost committee show 72 cars aggregate weight 8,422,083 pounds for sulphuric acid, 65 moving in private tank cars and 7 in carrier box cars. The box cars loads weighed 321,353 pounds and the 65 private tank car loads weighed 8,100,730 pounds. In analyzing the $19.03 per car cost shown in the cost study for group 66, single line haul, we have no way of checking the item of 73¢ per car clerical cost and $14.28 per car switching cost, but in I. & S. 1854, 83 I. C. C., 432, the average switching cost within the Chicago Switching District of sulphuric acid was shown by the Indiana Harbor Belt to [fol. 705] be $2.58 per car at the General Chemical Co. Plant and $2.47 at the Grasseli Plant during January to May, 1923 inclusive. The same witness estimated switching costs for both terminal movements from the General

Chemical Co., to American Maize Co., at $4.33 per car and from Graselli to Swift & Co., at $4.94. (Tr. 719.) This carrier witness said that haulage was the least important element of expense, the principal items being terminal expenses at each end. The Indiana Harbor Belt is the principal single line carrier of sulphuric acid within the Chicago Switching District. Of the 72 cars of sulphuric acid included in the total of 149 shown in group 66 of the cost study, Exhibit 7, 53 moved over that line, 9 over Elgin, Joliet & Eastern Railroad, 9 over the Baltimore & Ohio Chicago Terminal and one over the Pennsylvania. The item $4.02 per car for car detention cost shown on page 2 of Exhibit 7 is not proper. We provide the cars and bear the expenses of maintenance and operation and the detention of these is an expense to the shipper and not the railroad. Sauer's Exhibit 3 shows average maintenance cost of freight cars of 9 representative lines during 1926, as 64.352¢ per serviceable car day, not including taxes, overhead and investment. That charge may be proper in combining cost of commodities generally but cannot be charged to sulphuric acid in tank cars which the shippers themselves bear. (Tr. 720.) The 2¢ rate on sulphuric and muriatic acid in tank cars to the Chicago District has been effective via Baltimore & Ohio Chicago Terminal since December 6, 1921, per its tariff I. C. C., 243. Prior to December 2, 1923, the Indiana Harbor Belt published 2¢ per 100 pounds single line rate on sulphuric acid in tank cars and 2½¢ and $5.85 per car of 60,000 pounds, plus 12½¢ per net ton for weight in excess of 60,000 pounds and in Chicago Switching District case 83, I. C. C., 432, the Commission permitted the [fol. 706] Indiana Harbor Belt to publish a uniform rate of 2½¢ per 100 pounds.

Chairman Campbell: We will adjourn at this time until 9:30 tomorrow morning, May 19, 1928 at 9:30 o'clock. (Tr. 721.)

Hearing reconvened at Chicago, Illinois, May 19, 1928, at 9:30 A. M.

H. W. Robertson, called in behalf of complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am assistant traffic manager of the Sinclair Refining Company, with office in New York City. Am familiar with the switching situation at Chicago; for ten years prior to March, 1920, represented Illinois Central Railroad in Chicago, and attended all meetings of Chicago Switching Committee. (Tr. 723.) I cannot say that I participated at the beginning in the development of the Lowrey basis for switching, as in the beginning the big switching lines tried to freeze out the Illinois Central Railroad. (Tr. 724.) In this case I am appearing for Sinclair Refining Company, Standard Oil Company of Indiana, and Roxanna Petroleum Corporation (Tr. 724), and my evidence will deal primarily with the oil situation. The plants of these companies are located as follows: Standard Oil Company at Whiting, Indiana, on Baltimore & Ohio Chicago Terminal, Indiana Harbor Belt, New York Central, Pennsylvania, and Elgin, Joliet & Eastern; Sinclair Refining Company at East Chicago, on all above carriers except New York Central; Roxanna Petroleum Corporation at East Chicago, served only by indiana Harbor Belt Railway. (Tr. 724-725.) All these refineries are on Indiana Harbor Government Canal, which is open, so that oil may move by water to them.

[fol. 707] All refineries ship petroleum products to themselves and customers in the Chicago switching district, 90 per cent thereof being privately owned tank cars. (Tr. 725.) In a 12-months' period for the Standard Oil Company and Sinclair Refining Company, and an eight-months' period for Roxanna Petroleum Company, 40,769 cars of petroleum or its products moved to the Chicago switching district; 14,836 were single-line hauls, 25,591 two-line hauls and 442 three-line hauls. Based on suspended rates the increased revenues on those shipments would be $219,318.00. If the increases become effective each of these refineries would have to extend the operations of the tank wagon. Petroleum oils in bulk are shipped to wholesale distributing plants and actual distribution is made therefrom by tank wagon. We have many wholesale distributing plants to which we ship in tank cars and then move it in tank wagons. (Tr. 726.) We would have to lessen the

number of bulk station shipments and handle more in tank wagons. Because of congestion we might not do that entirely, but would ship by tank wagon from East Chicago, resulting in the abandonment of our Indiana Harbor station. (Tr. 726.) There is a possible movement by tank barge. Our company did not locate altogether on water in the Chicago district. We have plants in Chicago reached by water, which barged supplies from the refinery at Whiting during the war, and it can be done again. (Tr. 727.)

The Texas Company refinery at Lockport, Illinois, barges its oils therefrom via drainage canal and Chicago River to deliveries in Chicago. Having knowledge of barge and towing costs in New York, Philadelphia, Norfolk, Charleston, New Orleans and Houston harbors, would say barge expense from Lockport to deliveries in Chicago district would be less than 2½ cents per hundred pounds. (Tr. 727.)

The Roxanna refinery is not on the canal, but has prop-
[fol. 708] erty thereon which it is improving with dock facilities and it will pipe from its refinery to the dock. This company is only really started here. It has 4 plants, which would be few compared to what they may have. If these rates are increased the Roxanna Company will undoubtedly put plants on the water. Our company could not do that now without a very heavy financial loss in dismantling the distributing plants we now have. Our refinery, as well as all three refineries, are located where we can use water.

Undoubtedly there are a number of customers taking tank car lots of our products who could be served by water, and those not having dock facilities could be reached at very little cost by an unloading pipe, which is all that is required in unloading oils from a barge. (Tr. 728.) On part of our shipments the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt make an allowance of 1½ cents per mile on tank cars where deliveries are made at Blue Island and west. Deliveries east thereof in Illinois or in Calumet district no allowance is made. About the closest delivery is the Chicago & Eastern Illinois, and they allow 9 miles. The largest mileage allowed is 35 miles, which is to Norpaul, and round trip is 70 miles at 1½ cents, which would take from 7 to 10 days. (Tr. 729.)

The railroads should not charge car detention on privately-owned cars, as there is no expense to the railroad as there is on railroad-owned equipment. (Tr. 730.) Prac-

tically 100 per cent of tank cars return to the refineries empty. The shipper routes the loaded car as well as the empty. There is outbound line movement from these refineries to points outside the district that greatly exceed line-haul movements to the Chicago district. Our records show that in the Chicago district we never have a car for delivery therein on any trunk line, road-haul line, but what [fol. 709] it gets more than one car for the road-haul delivery; and when cars are returned there is hardly a case where loads are not brought in with empties in the same train. (Tr. 731.) Checking 19,636 of our cars we found that carriers hauled 13,025 to a yard and then back again, on which they figure excess mileage of 42,501 miles, or an average of 3.26 miles per car. (Tr. 732.)

Cross-examination.

By Mr. Davis:

It is not at all times possible, when a train passes a switch, to break it up if it has a car or two for our plant, but it is done sometimes. (Tr. 732.) In some of these costs I know the details as to train, the make-up yard before putting them in the train, and the switch into the plant before they go to the next yard. This could be done by placing the cars either on the head or the rear of the train and leaving the main body of the train on the track and then switching our cars as they pass the switch.

We do not contend if these rates are increased that all refineries will move out of the city, and made no such representation. We will not move out. (Tr. 733.) We will still deliver here and have the same gallonage distribution, but with another method. The mileage allowance being less than 10 cents per car per day, does not influence our routing. We want the car returned as soon as possible. We have had our tank cars held in the Chicago district 14 days. The 1½ cent allowance per mile is not of any particular advantage to us. It does not anywhere near pay maintenance cost; but we desire the continuance of the allowance because in all it amounts to about $2.00 per day. (Tr. 734.) There would be no increase in the price of gasoline if the proposed rates go into effect. (Tr. 735.)

[fol. 710] Cross-examination.

By Mr. Orcutt:

All oil, including gasoline, coming to bulk stations by tank cars is distributed therefrom by tank wagon. (Tr. 736.) I said if the rates increased we would have to eliminate some delivery stations and locate on water, making longer deliveries by tank wagon, which would increase tank wagon deliveries more than today. The percentage of that increase I cannot give. We deliver through the Calumet district today direct from the refinery by tank wagon. (Tr. 736.) Have been with Sinclair Refining Company since 1920, three years in Chicago and five in New York. Was in Chicago in 1920. The 40 per cent increase in rates of August 26, 1920, did not materially change the ratio of tank wagon deliveries as compared by rail, as such ratio existed for the year prior to the increase; but the proposed increases would make such change because we have gotten about the limit now. (Tr. 737.)

Redirect examination.

By Mr. Walter:

All highway conditions have greatly improved since 1920, including methods of handling, trucking, etc. With very few exceptions all petroleum oils, including gasoline, move to the Chicago district in 10,000-gallon tank cars, with stated weight of 6.6 pounds per gallon, making 66,000 pounds upon which we pay freight. The stated weight is about .3 pounds per gallon above actual weight. (Tr. 738.)

Recross-examination.

By Mr. Davis:

The estimated weight of the 6.6 pounds per gallon applies in Central Freight Association and trunk line territories and practically throughout the United States except in some states where less. This weight includes some commodities weighing more than 6.6 pounds per gallon in offi-
[fol. 711] cial territory; but on the average the estimated weight would exceed actual weight of petroleum products shipped. (Tr. 739.)

E. A. MUNSON, duly sworn, testified as follows:

Direct examination.

By Mr. Knowlton:

Have been in traffic work for the last twenty years. Am traffic manager of American Tar Products Company. Prior to 1925 I was located in Chicago and am generally familiar with the Chicago switching district. (Tr. 740.) My company moves the bulk of its material in liquid form and therefore in tank cars to a great extent, which being used for a special purpose, railroads do not ordinarily supply to the shipper. My company supplies its own tank cars of 10,000-gallon capacity, which it loads to capacity. Certain shipments require insulated cars. Our business does not require this more expensive type, which is to the advantage of carriers, because the insulated type is more expensive to maintain. My company owns over 300 tank cars, and we lease many others. We must determine quite accurately our tank car requirements in order to keep the cars continuously in service, and we have reached a greater car efficiency than the average railroad. (Tr. 741.) The insulated car rental was $45.00 per month or $1.50 per day. The non-insulated, $37.50 per month on a long-term lease, and if carriers will lease appropriate cars at less figures, we would be interested in the proposition.

Our position in this case differs from that of the usual shipper because we ask allowance of the cost of the equipment used in the switching service. We get 1½ cents per mile for tank cars, which does not equal maintenance cost, but is of assistance. The switching service does not give much mileage, and for 10 miles our average haul to the Chicago district yields 15 cents for the use of a car in service several days, which is absurd to consider as compensa-
[fol. 712] tion. (Tr. 742.) We ask in this case to be compensated on a fair basis, Tar is not shown in the cost studies. Our investigation shows average time consumed in round trip movement of our tank cars in the Chicago district is 4.61 days, to which should be added reasonable time for loading or unloading, and a fair allowance for tank car use in switching district would be $1.25 per day. The cost studies are based on the cost of supplying equipment generally. Actual cost on cars owned by ourselves

or others would exceed $1.25 per day, but this suggestion is to give carriers an opportunity to supply us with tank cars if they desire to do so at less figures. I do not claim any one method of relief is the only one. My claim is that the cost study is imperfect and incorrect unless the costs for tank cars furnished by shippers are excluded. It is all wrong from an accounting standpoint and should be corrected. (Tr. 743.)

Car detention is used in Mr. Saur's Ex. 7, showing $4.25 to $5.61, to which is added another factor to cover return on investment, etc. Applied to our shipments, this amounts to more than ½-cent per hundred pounds. Certain special raw material rates are not to be disturbed, which are satisfactory to us and for which we use one movement entirely in Illinois and interplant. The reasons for the establishment of this raw material rate and its maintenance are: First: It was established to prevent our building pipe line. Second: It covers a short one-line haul. Third: It is merely a switch of our equipment, with no allowance. Fourth: It causes no discrimination. (Tr. 744.)

Cross-examination.

By Mr. Davis:

This raw material rate applies to coal tar moving C. & I. W., and we pay $9.00 per car. We have but one plant served by Chicago & Illinois Western and Illinois Central. The $9.00 per car rate applies for a distance of approx- [fol. 713] imately 2 miles. (Tr. 745.) We produce tar and creosote oil, but our principal movement within the Chicago district is coal tar, with which we deal in gallons, worth from 4 to 5 cents per gallon, crude, which we ship within the district. (Tr. 746.) Refined tar used in the district we haul from our plant in tank wagons, which is paving and roofing tar worth approximately 9 cents per gallon, with the same rate as on the crude. (Tr. 747.)

J. T. Forest was recalled as a witness.

Direct examination.

By Mr. Walter:

The $1.50 rate on pig iron by water, previously referred to, includes all dock charges, loading and unloading, at each end of the trip. It is not the only rate at which pig

iron moved last year. A number of boatloads were brought in at 75 cents per ton, which included loading and unloading charges, which applied from both Cleveland and Buffalo. (Tr. 748.) It is the expectation of the leading Lake Erie and Lake Michigan lake lines that this will be a dull season also. Forty thousand or more tons of pig iron were brought into the city of Chicago via water. (Tr. 749.)

Regarding pig iron competition from Alabama in Chicago, the barge and rail rate from Alabama plants to Chicago is $4.18, as compared with $6.01, the all-rail rate per gross ton. As we go to the Southwest the barge and rail rate decreases, while our charges increase. (Tr. 749.) My exception in Ex. No. 23 as to certain cost items, upon investigation shows it was properly taken and which relates to the subject of weighing. Where the commodity is sold by weight cars are weighed both light and empty. Cars loaded with refuse or material of little consequence are weighed loaded and tare weight stenciled on the cars is used. Tank cars are not weighed light except occasionally [fol. 714] for checking purposes, as to whether or not they have been emptied. Tanks return sometimes with some material in them, on account of carelessness at the unloading point or from some accident which prevented complete unloading. (Tr. 750.) If on examination material is found in the car it is reweighed. (Tr. 750.) This does not happen in shipments of light oil, which go to consignees well equipped for handling it and are always completely emptied. Light oil, ammoniacal liquor and coal tar are sold by the gallon, and we have no interest in weight except as related to freight charges. We weigh the cars from time to time for checking purposes, but it is not the rule that a tank car continually in service is weighed every time loaded, and in the exception mentioned the car was not weighed before loading. (Tr. 751.) In checking during the cost study period in August our company, through its yardmaster, actually traced a number of car movements by putting men on the cars, who made 19 trips during the test week. Three of those trips moved via roads not in the cost study or involved duplication of a route, leaving 16 as to which we got accurate account during the entire

movement of each. (Tr. 751.) I mention trips because in instances more than one car was involved. Of the 16 there were 7 where our record of movement with the route sheets of the railroads show application of cost elements not actually involved in the movement. These were the cases presented in my Ex. 23, not to criticise the actual movement, but to show misapplication of the cost elements in the study (Tr. 752); although in some instances it might be said that the actual route was circuitous or the movement dilatory or other reason indicating lack of operating efficiency. (Tr. 752.)

The first movement referred to in Ex. 23 covers pig iron from our blast furnace to National Malleable & Steel [fol. 715] Castings Company at Melrose Park. (Tr. 753.)

The pig iron was loaded in Chicago & Alton car 43,212, which was moved by our own engine from our Federal Furnace plant to Indiana Harbor Belt and placed on track No. 5 at Clayburn Yard at 4:00 P. M., August 8, 1927, where it was classified. Clayburn is shown as South Chicago on the sheet, a very short distance from our furnace plant. (Tr. 753.) The car moved from Clayburn at 6:35 p. m., via Indiana Harbor Belt engine No. 320 with 57 cars, arriving at Calumet City yard at 7:20 p. m., remaining for classification to 2:40 A. M., August 9th when it moved by engine No. 157 with 40 cars, arriving at Blue Island at 3:15 a. m., remained there for classification until 10:50 A. M., and thence was moved by engine 410 with 58 cars arriving at La Grange at 11:50 A. M., and remaining until 12:25 P. M., while deliveries were being made to the Chicago Burlington & Quincy at La Grange. It left La Grange at 12:25 P. M., with 33 cars, arriving at Broadview at 12:40 P. M., and remained until 1:00 P. M., while the Indiana Harbor Belt made deliveries to the Illinois Central Railroad at Broadview, leaving there with 28 cars at 1:00 P. M., and arriving at Bellwood at 1:10 P. M., and held until 1:35 P. M., while delivery was being made to Chicago Great Western Railroad. It left Bellwood at 1:35 P. M., with 18 cars and was spotted at the Melrose Park plant of the National Malleable & Steel Casting Co., at 1:45 P. M., of August 10. (Tr. 755.) The second sheet of the Exhibit shows movement of car of coke from our coke plant to Southern Car Wheel Co., at Hammond which was traced by a man no longer in our employ. Mr. Hall traced the

car and rode with the car of pig iron. (Tr. 755.) We excepted to the classification of the coke car at Burnham, but there are other movements that are not right, a great many that we take exception to. (Tr. 756.)

Chairman Campbell: Let us understand about riding cars. We cannot sit here and listen to every man who has [fol. 716] ridden any of these cars and I am not going to do it.

Mr. Connell: I only asked for one—Mr. Hall.

Commissioner Campbell: Very Well. (Tr. 756-757.)

It might be well on both sides to have the men giving the instructions specifying what they were and stating in a general way how they were carried out. (Tr. 757.)

The Witness (continuing): Well, I gave them myself, that is, I passed them on in a general way to Mr. Calene but to Mr. Hall, they came from Mr. Calene. (Tr. 758.)

With reference to the coke car, there was no classification at Burnham and a great many other items should be omitted, totaling $3.69. (Tr. 759.)

The movement of this coke car was handled by Chicago Short Line engine 28 and taken from the coke plant at 2:30 A. M., August 9, and delivered to Interchange track at 115th St., at 2:50 A. M., and there held until 5:50 P. M., when it was moved by Indiana Harbor Belt engine 315, from the 118th st. yard with 103 cars at 5:50 P. M., August 10th; from 5:50 P. M., to 6:00 P. M., the train was held at 118th St., yard to J. O., block station; from 6:00 to 6:40 P. M., waiting for a block at J. O., station. It was in Calumet classification yard from 7:20 P. M., to 5:35 A. M., August 11th; Indiana Harbor Belt engine 318 moved it from Calumet yard with 61 cars at 5:35 A. M., arriving at Gibson yard at 6:10 A. M., where it remained in classification yard to 10:15 A. M., then leaving Gibson yard with engine 169 with 26 cars it arrived Osborne Yard at 10:35 A. M., remaining in classification there from 10:35 to 2:15 P. M., then moved by Indiana Harbor Belt Engine 169 at 2:15 P. M., and was spotted at Southern Car Wheel works at 2:45 P. M., August 11th.

The man riding this car was instructed to stay with it all the time, but I was not there, of course. He made report [fol. 717] to me that we believe to be correct. (Tr. 760-761.)

The light oil movement was traced by Mr. Hall. 2 tank

cars, C. N. T. X., No. 378 and N. A. T. X., 1343; Belt engine 120 moved these cars from our South Chicago plant and delivered them to Chicago Short Line 7:25 P. M., August 5 and they arrived at Hawthorne 7:45 P. M., the same day. In the fourth case referred to, the cars were followed by Mr. Calelle himself, and cover 19 cars on August 5 from our coke plant to our furnace plant. Chicago Short Line Engine 60 moved these cars loaded with coke from the plant at 12:00 noon, August 5, delivering them to Pennsylvania railroad interchange at 112th St., at 12:30 P. M., August 5, where they remained on interchange track from 12:30 to 3:35 P. M. Pennsylvania Railroad engine No. 8666 moved them at 3:55 P. M., and delivered them at Federal Furnace interchange at 4:30 P. M., when they were taken by our own engine to our plant. There was no classification whatever in this case. It was part of the shuttle movement which I have described in my previous testimony. (Tr. 763.) The fifth case in my Exhibit 23 follows movement of a car of coke from our plant to Douglas Coal Co., at Hawthorne, Car B. R. C. No. 1543 taken from interchange with Chicago Short Line by Belt Engine No. 129, leaving South Chicago at 10:10 P. M. August 4 and delivered at Hawthorne at 3:30 A. M. on August 5. (Tr. 764.)

The 6th case covers 8 cars of coal tar No. B. M. X., 567, 603, 4018, 4021, 4308, 4467, 4744 and 4918 delivered by Chicago Short Line to Belt at 7:00 P. M. August 7th and moved by Belt Engine No. 125, arriving at Hawthorne at 9:05 P. M., August 7.

The last case covered by the exhibit is car of Ammoniacal Liquor No. G. A. T. X., 11680 taken from our plant by Chicago Short Line engine and delivered to Belt at South Chicago moving therefrom Belt Engine No. 128 at 5:30 P. M., arriving at Clearing at 6:30 P. M., August 7th.

[fol. 718] We covered a number of cases besides those in the Exhibit in which we found no evidence of misapplication of cost elements but a great deal of switching service that was far from efficient and expeditious. (Tr. 764.) I could give these for the purpose of showing that by reasonable management, some economies might be effected. There is a large movement of pig iron from Federal Furnace plant to the Interstate Steel plant at South Chicago, running from 6, 10 to 12 cars per day. The distance after reaching Clearing, our South Chicago yard where we de-

liver cars with our own engines is around 5 city blocks. We traced Pennsylvania cars 276,022, 823,250 and 324,525 loaded with pig iron, delivered by our engine to the Pennsylvania railroad on its track No. 5 at Clayburn yard, 4:55 P. M., August 5. (Tr. 765.) At 12:35 P. M., August 6, the Pennsylvania railroad engine No. 8392 picked the cars from track 5, switched the track, and set the cars back on No. 5 track at 1:00 P. M. Pennsylvania Engine 6342 moved the cars from track 5 at 2:30 P. M., and set them on track No. 4; the Pennsylvania engine No. 8666 moved the cars from track No. 4 at 3:45 P. M., August 6, delivering them to Interstate Iron & Steel Co., siding at 4:15 P. M. on August 6, a haul which could be made in 15 minutes. There is no reason justifying such movement or handling. The cars were simply lying around the yard. Perhaps if we had had 12 cars instead of 3, the movement might have been quicker. But with 3 cars, they thought they would wait and see if some more would not turn up. (Tr. 766.)

C. R. CALENE was sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am yard superintendent of By-Products Coke Corp., and have been since 1910, having had 22 years railroad experience. Am familiar with operations in the Chicago Switching District and particularly with the operations ontlined [fol. 719] by Mr. Forest; heard his testimony and concur in what he stated. At the time of the cost study, I issued instructions to the men who rode the cars and rode some myself between the coke and the furnace plants. Other men had the other routes. (Tr. 768.) I instructed them to follow car from point of shipment to point of destination and report every movement of the shipment.

Cross-examination.

By Mr. Davis:

My 22 years railroad experience includes all of it. Have had charge of railroad work at the plant since 1910; had 2 years railroad experience with the New York Central

lines before that as a switchman in South Chicago and was helper and conductor on the switch engine. (Tr. 769-770.)

H. G. BROWN, called and sworn, testified as follows.

Direct examination.

By Mr. Miller:

Am traffic manager of the Illinois Brick Co., and have been engaged in traffic work about 23 years, part of that time with the railroads. (Tr. 770.) The Lowrey agreement, as originally proposed did not cover increase in the rate on common brick, which before the agreement, was 1¢. There was not an all commodity basis at the time. The rates varied on single line hauls, but in the first Lowrey tariff, they were put in on the first all commodity basis of 1½¢, subsequently reduced to 1¼¢, which remained effective until general order 28, June 25, 1918. Prior to general order 28, the rate on other commodities on the Lowrey tariff in the district single line hauls was 1½¢. (Tr. 771.)

Under general order 28, an arbitrary of 2¢ was added to the brick rates, making 3½¢ single line hauls, subsequently the rate was made at 1½¢ becoming effective in November, 1918. This rate continued until the general increase and [fol. 720] then became 2½¢ with some variations in some of the different tariffs. In the general decrease, common brick rate was not reduced, that is, the 10% decrease did not apply to common brick because commodity rates of 2½¢ or less were not given the 10% reduction which in effect made the brick rate the same as the all commodity basis of 2½¢ as the reduction brought all 3¢ rates down to 2½¢ again; which has applied with few exceptions until the present proposed increase. (Tr. 772.) The Illinois Brick Company manufactures and sells common brick only, with 10 operating plants, 6 within the Chicago district and 4 just outside. Within the district, we have 2 plants at Weber on the Chicago & Northwestern, 3 plants at Blue Island, one on the Baltimore & Ohio Chicago Terminal at 123rd St., one on the Rock Island at 119th St., and one on the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt jointly at 138th St. We have one on Indiana Harbor Belt at Dolton practically 139th St. Out-

side the district, we have one on the Chicago, Milwaukee & St. Paul at Northbrook and 2 on the Pennsylvania at Bernice and one on the Illinois Central at Manteno, all points in Illinois. About 80% of our brick is sold within the Chicago Switching District. (Tr. 773.) It must be sold there because it is a low grade commodity, low priced and with line haul rates comparatively high, our distribution is restricted to surrounding territory. We have a basis of 80% of the all brick commodity rates applicable to all territory within 150 miles, beyond that, we pay the general brick rate for line haul movement, which does not apply to a switching movement. We have a very large truck delivery within the Chicago district. From 1919, truck deliveries have increased from 8.2% that year until 1927 we delivered 36% by truck. There have been abrupt increases in truck delivery at times when rates have been changed. (Tr. 774.) Prior to the 1920 increase, our truck [fol. 721] deliveries were 14.9%, but with that increase, they jumped to 25.9% for the balance of the year after the increased rate went in. That has steadily increased until we now have 36% truck deliveries. The abrupt increase in rates was about the middle of 1920.

Q. Mr. Brown, have you estimated the effect the proposed increase of rates on common bricks would have on your trucking deliveries in the Chicago District.

Mr. Orcott: Objected to as being merely conjecture.

Chairman Campbell: I will let him answer the question.

The Witness (continuing): Our trucking at the present time is based on zones. Our zone mileage is practically a 10¢ increase per mile. Increases in freight rates of 20¢ per Ton increases our zoning by at least 2 miles. That rate increase will extend the present truck zone by at least two miles and really more than that in order to meet competition of our competitors where their situation demands truck deliveries. The Burke & Brisk people on the Western side move practically all of their output by truck and are in very keen competition with us. They are two concerns. (Tr. 776.)

Exhibit No. 50 prepared by me shows shipments by our company of common brick for months of June, September and October of 1926, consisting of 3 sheets offered and received in evidence marked, "Exhibit 50, Witness Brown." (Tr. 777.)

I prepared exhibits showing comparison between movement of brick during these 3 months with movement of common brick during test period August 4th to 10th, 1927 for 1, 2 and 3 line hauls which were offered in evidence as Exhibits 51, 52 and 53. Exhibit 51 shows one line hauls consisting of 3 pages, (Tr. 777.) Exhibit 52 consists of 2 pages and Exhibit 53 a single sheet, which were received in evidence, marked "Exhibits 51, 52 and 53, Witness Brown." (Tr. 778.)

[fol. 722] In June, September and October of 1926 we shipped 1650 cars of common brick, single-line, an average of 550 cars per month, shown in Ex. 50. For the test period August 4 to 10, 1927, 102 cars shown by Ex. 51. During the month of the test period we had 468 cars and 102 for the 7-day test period. Our average per month for the 3 months shown in Ex. 50 was 550 cars, and for the year 1926 was 557 cars per month for one-line hauls. (Tr. 778.) The test period week was not representative because it shows a lower ratio than the other months. The average loading for the test period was 69,729 pounds, while for the 3-months' period of 1926 was 75,985 pounds (Tr. 779), which was fairly representative of the average for 1926.

Our Ex. 50 shows variation in average weight shown. At yard 17 on the Rock Island we received a large proportion of 80,000-pound capacity cars, average loading for June being 82,857 pounds; for September, 84,667 pounds, and for October, 82,545 pounds. But at plant 22 on the Baltimore & Ohio Terminal, with less proportion of 80,000-pound to the smaller 60,000-pound cars, our average loading was 77,984 pounds for June, 73,151 pounds for September and 71,092 pounds for October. This situation applied at yard 42 also. (Tr. 780.) The cars furnished by the Baltimore & Ohio Chicago Terminal are practically all 60,000-pound cars, which we load 110 per cent of capacity. If that road furnished 80,000-pound or 100,000-pound capacity cars our average would be materially higher, because we load 110 per cent of capacity.

At Northbrook plant No. 1 we receive a large proportion of 80,000-pound cars from the Chicago, Milwaukee & St. Paul, and our average loading for June, 1926, was 88,914, September 89,205, and for October 88,423; with average revenues per car for June, $22.22; September, $22.30, and October, $22.10, moving via that railroad. (Tr. 781.) There

were 268 Northbrook cars for June, 73 for September and [fol. 723] 104 for October, moving to the switching district.

The same situation obtains at Berenice on the Pennsylvania Railroad, but shows much higher average due to large number of 100,000-pound cars furnished. At that point average loading in June was 95,709 pounds, September 95,980, and October 95,962, yielding revenues $23.93 for June, $24.00 for September and $23.95 for October per car to the Pennsylvania. (Tr. 782.) We take whatever equipment the Baltimore & Ohio Chicago Terminal furnishes, and which consists of old cars assigned to it by the Baltimore & Ohio, much of which are in disrepair and cannot be used in any other service except brick. There is a tendency to increase car capacity and the carriers are building more 80,000-pound and 100,000-pound capacity cars. (Tr. 783.) As the smaller cars disappear from service our average loading and the average revenue will naturally increase. Our loading is only limited by the size of the cars we receive, and if the higher capacity cars are given it will put us in a position to furnish revenue as high or higher than from any other commodity shown in Ex. No. 11, with the possible exception of pig iron, iron and steel, and cement. With the exception of these brick would yield as high or higher revenue than any other commodity. (Tr. 784.) There are very few loss and damage claims on common brick. We have not filed one in ten years. No weighing is required of common brick because they are handled on the agreed weight basis. The bulk of cars furnished to us for common brick could not be used for any other purpose. (Tr. 785.) They have leaky roofs, holes in the sides and bottoms which many times require planking the floors to permit their use for loading. (Tr. 786.) As to charging car detention against cost of handling brick, most of the equipment in the brick service has prob- [fol. 724] ably been retired so far as carrying on the equipment register is concerned. We found several cars we used that had been in use for twenty years.

I prepared exhibit as to the matter of car detention on common brick. (Said exhibit was offered and received in evidence and marked "Ex. No. 54, Witness Brown.") (Tr. 786.) In that statement I used the cars shown in my Ex. No. 51 under September, 1926, except a few to destination points as to which I could not secure complete data. (Tr.

786.) The study made by me covers 409 cars. We keep an elaborate system of records on the cars, the car report from our plants showing time cars are ordered and when placed for loading, and when billed out. At our divisions where cars are unloaded we have a like report, showing time placed for unloading and time when released, and have used those reports in making this statement. On the 409 cars covered the total detention was 2215 days, an average of 5.27 days. In this average .14 represents demurrage we paid at unloading points. The last column shows amount of demurrage paid at each unloading division. (Tr. 787.)

The carriers show average car detention cost $4.17, representing approximately 6½ days. My check shows that is too high. In connection with the cost study my Ex. 54 shows 41 cars moved via Chicago & North Western from Weber to Mayfair, a distance of 5.1 miles, which consumed 3.51 days in movement under load; that is, from the time they were loaded and released or picked up from our yard until placed for unloading at Mayfair. In the study it appears that the time consumed in transit is in all cases higher than the time consumed in loading and unloading. (Tr. 788.) It seems to me use of car detention in determining cost, or arriving at repair cost, establishes somewhat higher per car charge than is proper or that should be applied [fol. 723] against switching movement. In the exhibit I have used one day from time of placement on all cars, as that is from time we place the order for the empty until it is placed at our plant, but in many instances 1 day has not elapsed because cars are ordered in the afternoon and placed for loading before 11 o'clock the next day, and my figure of 5.27 days is rather high as far as actual elapsed time is concerned. (Tr. 789.)

At yard 22 our average movement from that yard runs over 30 cars per day, which move practically to 8 destinations in cuts anywhere from 3 to 8 to each destination, but moving from the plant as high as 30 cars at a time. In billing these cars we show those for the same destination together, which avoids excess switching. Those for each destination are assigned together in the train and do not require switching after they are pulled from the yard. That is the general rule, though there may be a few exceptions. (Tr. 790.)

I heard the testimony of Mr. Womer regarding charges on a per-car basis for switching movements. (Tr. 790.) As far as brick is concerned, the per-car basis would not tend to increase our cost to a great extent, provided proper cars were furnished, that is, higher capacity cars. With higher capacity cars we would not object to a per-car charge. We are satisfied with the present basis, however, on common brick, and believe it should be retained in justice to Chicago switching interests. (Tr. 791.)

We own in the switching district 26,389 feet of plant track built at an approximate cost of $143,000.00, which we keep in repair. The carriers in their cost study made no allowance for the application of their operating ratio over those tracks, as compared with railroad owned tracks.

With reference to circuitous routing of freight in the Chicago district, I see no difference between that than [fol. 726] there is in circuitous routing on main-line hauls. On a short-line route between two points costs should be based on that short-line movement. Competitive carriers desiring that business requiring loss of 80 to 100 miles should not penalize shippers with that additional expense in making up cost figures. (Tr. 792.) Circuitous movements of these cars result in most instances through solicitation of the carriers. If they want to force us to move all business via short lines we can do that.

Cross-examination.

By Mr. Davis:

As to circuitous routes I see no difference between the switching business and road-haul business, so far as established costs go. (Tr. 793.) There are mileages in road-haul comparable with mileages in the switching district, but a competitive situation exists in the Chicago switching district that is not in road-haul business. Your road-haul business is not based on mileage, in most cases, but based on some competitive situation also. The two should not be put practically upon the same basis. The cars moving during the test period weighed less than for the greater period shown by my exhibit. There is no 7 days in the year that would show the conditions. There would be variations. There would be variations in comparing figures for one year with another. (Tr. 794.) Demurrage begins

after the first 7 A. M. following the placing of the car, and released when we give notice to the carrier, and it is not subject to demurrage following the day on which we give release.

Ex. 54 shows actual placement of the car and its release in all cases. (Tr. 795.) The car would not be detained before we gave an order to place it. We give an order for cars and the carrier gets the cars some place, and the time elapsed between the order and placing would be shown, but in this case where every order is shown there is not [fol. 727] one where the car was not placed within the 24 hours shown on the exhibit. (Tr. 796.) We usually order cars at 3 P. M., and when so ordered they are placed the next morning, and in every car shown there has been no delay. You must have that car some place to give it to us, and I could not determine how long you detain it anticipating our loading. I did not take into account, after release of the car, the time it might remain with the carriers before given to someone else. (Tr. 797.)

On page 2 of Ex. 52 the shipments October, 1926, Blue Island to Pullman Railroad, should be shown as moving to Chicago, West Pullman & Southern. In other respects it is correct. (Tr. 798-799.)

CHARLES A. SHANK sworn and testified as follows:

Direct examination:

Am traffic manager of National Brick Company, Chicago, Illinois, and have been since its organization in 1905, having 5 plants, 3 in the Chicago switching district. I adopt the testimony of Mr. Brown given in behalf of the Illinois Brick Company so far as it applies to operations of plants, movement, uses and sizes of cars, and the disposition of brick, because there is no difference in those matters. We have a plant at Weber on the Chicago & North Western, where the Illinois Brick Company has 2 plants. We have 2 plants located in Chicago Heights, Illinois. Mr. Brown's testimony as to weighing and as to no claims applies equally to the National Brick Company as in his own business. (Tr. 800.) We do not subscribe to Mr. Brown's idea as to making a cost study for switching movement

predicated upon a road-haul movement. We think they should not be connected in any way. We do not oppose the [fol. 728] rates of 3, 3½ and 4 cents under suspension, regardless of the fact that common brick is a low-grade commodity on any comparison with other commodities in the district. Under the original Lowrey agreement common brick were exempt from the application of the one-line rate of 1½ cents. We are willing to surrender that differential if the Lowrey agreement within the confines described therein is made effective on all commodities moving within that district, at the same rate for all, with the exception of factory refuse, which is without commercial value. (Tr. 801.) Zoning of any part of the switching district today would be a hardship upon industries located as they were when no thought of zoning existed. Penalizing investments made under assurances that we would be protected in a rate basis as good as our competitors might enjoy within the district would be unfair. We located at Chicago Heights in 1905 and began operating our plant in 1906 under a $5.50 rate applied to a 60,000-pound minimum, excess in proportion.

At that time the district rate was 1 cent. But at the time there were many switching rates on other commodities in this case having rates lower than the 1-cent rate on common brick. Our rate was made because of the willingness to give the carrier a minimum weight of marked-capacity car. (Tr. 802.) The justification of a differential for common brick versus other commodities of that kind we feel equally exists today for the same logical reasons; giving to the carriers the same benefit from handling our product at the lesser rate today, that they received from handling it at the lesser rate in 1911 and thereafter. (Tr. 802.) In fixing a real Lowrey agreement in this case, there should not be a single exception as to any commodity. The same rate should apply on all commodities excepting, however, factory refuse without commercial value. Factory refuse is something that has to be wasted. It cannot be sold for any purpose and would interfere with the operation if left at the plant. A number of commodities today on single [fol. 729] line hauls move as factory refuse that have commercial value and enjoy lower rates. That is unfair to the balance of commodities in the district paying higher rates. If the carriers would furnish open top cars such as fur-

nished for crushed stone, sand, gravel and soft coal which are of much larger capacity than box cars, or if cars of that capacity were furnished at our plants with an opening at end or side, permitting movement on car floor with a wheel barrow, our average loading would be as high as any of the commodities shown in Mr. Haynes Exhibit 16, page 8. Within my knowledge, prior to the building of iron body cars, a wooden open top, becoming unsuitable for road haul purposes would be furnished us by carriers with an opening cut in the side, permitting us to run a wheel barrow on the floor of the car for common brick loading which would run for some years only in switching service in the Chicago District. We could use cars today not serviceable for sand, gravel, crushed stone and coal because, worn out as to those commodities, they would be serviceable for brick. The brick rate is 2½¢, compared with the 2¢ rate on sand, gravel and crushed stone for single lines. On our rate, with the same size car, we would show much higher earnings per car, per car mile, for the same mileage than those commodities return. (Tr. 804.) We have a $750,000 investment at Chicago Heights and to impair our earning power on that with other competitors not having that investment when we located on the low rate we did, would be unfair morally, if not technically and really illegal. We have 205 acres of land, making the life of the plant about 75 years. We are in favor of a basis for the switching district of Chicago of no higher than 3¢, 3½¢ and 4¢; (Tr. 805.) and believed it was acceptable to the carriers and to many shippers as a means for disposing for the time, the question of the proper level rates to apply on switching in the Chicago District. (Tr. 805.)

[fol. 730] Cross-examination.

By Mr. Walter:

I have no figures showing the truck movement of our product, but feel that the percentage to production runs higher than that of the Illinois Brick Company. (Tr. 806.) An increase in rates would not put more of our products on trucks. We are the only common brick manufacturers in Chicago or the Chicago district favoring the basis of 3¢, 3½¢ and 4¢. We feel we can stand those increases and if we can with our 5 plants, we feel our large competitor

who determines the price in this territory can also stand it with its 10 plants. (Tr. 807.)

Cross-examination.

By Mr. Miller:

Our plant at Weber is the only one in the Chicago district as the district is now constituted. For two years, there was not a car produced at our plant at Weber and that was true of your own brick there. You ship brick from Blue Island on a two line haul to Weber station to unload there to take care of the demand for your product in the Weber district. I cannot say the number of cars shipped by rail from Weber for the past 2 years to the Chicago Switching District. (Tr. 808.) We are today shipping an average of 20 cars per day from our Chicago Heights Yard to the Chicago Switching District and from our Weber plant we are shipping 3, 4 and 5 cars per day into the district. There is no difference between their yard location and ours at Weber and no difference in the quantity that will move per plant or from the plant, and we are in favor of the 3¢, 3½¢ and 4¢ rates as applicable to the district. (Tr. 809-810.)

RALPH N. NEUMANN was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I live at Des Plaines and represent the Lion's Club there. Our membership consists of almost all the business men and manufacturers of the city. Des Plaines is on the Wisconsin division of the Chicago and Northwestern and Soo [fol. 731] lines, 16½ miles Northwest of Chicago and in the Chicago Switching district.

In 1927 over 5,000 cars moved in and out of Des Plaines, 900 of which moved thereto from points within the switching district including such commodities as coke, iron, steel, cinders, cement, pipe, fertilizer, white lead, crushed stone, etc.

We agree with Mr. Haynes' testimony with reference to Exhibit No. 15 that all points in the Chicago switching

district should enjoy the same rates, giving all stations shown in red on the exhibit the regular switching rate and abolishing the ½¢ arbitrary assessed industries shown on the green line. (Tr. 816-817.)

One of our industries manufacturing green house construction material has competitors in the inner zone and at Forrest Park, a green line station. Their competitors in Chicago and Forrest Park have lower raw material rates to their plants than the rate to Des Plaines although all are located within the switching district. The Des Plaines firm ships finished products to all points West of Cleveland in carload lots. The same competitive situation applies to other industries at Des Plaines and some find it cheaper to ship their finished product by truck. There are 17 green houses in Des Plaines; the three largest on the Soo line use 200 cars of coal, 75 cars oil, 75 cars fertilizer and 40 cars of material and lumber yearly. 150 of which originate in the Chicago switching district. The other 14 each use yearly from 6 to 15 cars coal trucked from team tracks. Des Plaines flower growers are at a disadvantage compared with growers in the inner zone and at green line stations as added cost of transportation on imported materials cannot be added to selling price. (Tr. 817-818.) All flowers produced in our territory go to the Chicago market and sell for whatever they will bring without regard to cost of production. 5 material yards at Des Plaines had approximately 3,000 cars in 1927, 250 originating in the district. They find it more economical [fol. 732] to truck to Des Plaines such commodities as feed, rather than ship by rail from points within the district. This analysis does not include the entire movement in and out of Des Plaines. (Tr. 818.)

Chairman Campbell: We will now adjourn until Monday, morning, May 21, 1928. (Tr. 821.)

Hearing reconvened at Chicago, Illinois, May 21, 1928 at 9 o'clock A. M.

J. L. Roberts, duly sworn, testified as follows:

Am traffic manager of the Barrett Company having a plant in the Chicago Switching District, located on the South branch of the Chicago river and on the Chicago &

Illinois Western, near Crawford Avenue and on the Illinois Northern, which was the original line when we built the plant. (Tr. 823.)

We refine crude tars at this plant and the principal products that are refined therefrom are roofing and paving tar, roofing and paving pitch, some creosote oils and a little roofing cement. The Jones & Laughlin case does not apply to the tar industry at Chicago, as all concerned distributing tar products have plants in the Chicago district and secure crude tars, both from within and without the district and distribute their products through the same general territory. One plant located at Philadelphia engages in the general distribution of tar products which is owned and operated by the United Gas & Improvement Co., which supplies the tar from its coke ovens and gas plants. Another plant at Bayway, is engaged in the chemical side of the tar industry; also one at Denver, Colorado, securing its tar from the gas plants and coke ovens at Denver, operated by the same interests owning the gas and [fol. 733] coke plants. (Tr. 824.)

Our Chicago plant supplies the territory West of the line drawn through Indianapolis to Cincinnati and over 90% moves to points outside the Chicago district that is to points in Central Freight Association, Illinois, and Western Trunk Line territories. A large percentage moves in our own equipment. Crude tar is a product of by-product coke ovens and gas manufacturing plants Our principal sources of supply of crude tar are the By Products Coke Co., and the Wisconsin Steel Co., located on the waterfront. Our plants were located on the Chicago river, with the intention of transporting our crude tar supply from the source mentioned by water and we have the necessary barge equipment to do so, which was the method employed in transporting tar into our plant on the North side which we vacated when the South side plant was completed. (Tr. 825.)

The Chicago & Illinois Western Railroad requested the privilege of entering our south side plant shortly after it was in operation, which necessitated their building a bridge across the river. (Tr. 825.) After this rail connection they pointed out their outlay and persuaded us to ship this supply of tar over their rails. We believed

when we built the plant that the Illinois Northern could take care of our tar from other points in the district outside the ones I am discussing and principal points outside the district.

While rail movement costs quite a little more per year than water transportation, we have continued to favor the Chicago & Illinois Western. We get 80,000 tons per year from the Wisconsin Steel Company and By-Products Coke Corporation, and our present rate is 2½ cents. The proposed rate of 3½ cents would be 20 cents a ton or $16,000.00 additional charges per year on the movement from these two plants. It is entirely an intrastate Illinois move- [fol. 734] ment and if this Commission or the Illinois Commission permits the increase we will revert to our previous practice of moving the material by water. We have the necessary barge equipment, and making pipe line connection with coke ovens is a minor expense. (Tr. 826.) We own the tank cars for the all-rail movement, with no mileage or other allowance, and it is more economical for a switching line to handle private equipment than carrier equipment. (Tr. 826.) It relieves carriers of the per diem charge.

My Ex. 55 is a statement showing present and proposed rates on coal tar and per ton mile and per car mile revenues at present and proposed rates from producing points in the district to Barrett Company's plant. At the 2½ cent rate the average car earnings of $22.50 for the average weight covers 1656 cars received during the first 11 months of the year 1927. Ex. 23 of the By-Products Coke Corporation, covering coal car movement, shows apparently carriers' cost of switching of $12.50 per car was via route they showed for movement, which leaves margin of approximately $10.00 per car, as the items which have been eliminated will amount to $1.50. This seems a very good margin, especially at the present rates, especially as the movement is in our own equipment, which we maintain without cost to the carriers and without mileage or other allowances. (Tr. 828.) (Said document was received in evidence and marked "Ex. No. 55, Witness Roberts.")

My next exhibit, 56, shows rates on switching at various points through Southern official classification territories. None of these points have the density of traffic of the Chicago district, and as to tar, present rates from points in

question compare very favorably with rates between other points. We have movements of tar from industries on the Buffalo Creek Railway to Harriet, New York, for a two-line haul of 18 miles, with a charge of $15.80 per car. We have movements of tar from Buffalo to Harriet as shown [fol. 735] on page 2 of Ex. 56, and an outbound refined tar movement in the Detroit district, as well as refined tar movement from the Cincinnati district, shown at page 5. We move tar outbound from Boston to the points shown, and in connection with the two-line rate, from Boston to Forest Hills (Tr. 829) through the Boston station of the New Haven Railway, being the only connection between the Boston and Albany and the New Haven. (Said document was received in evidence, marked "Ex. No. 56, Witness Roberts.") (Tr. 830.)

Ex. 57 shows carload switching rates for railroad and privately owned equipment. The proposed rates will apply on both privately owned and carrier equipment, which is contrary to the custom in many parts of the country; and in 58 I. C. C. 429 the Commission stated in substance that maintenance of equipment was one of the largest operating expense items in the operating costs of common carriers. Tank car maintenance is greater than box car maintenance. (Tr. 830.)

In 55 I. C. C. 683, the Kaw River Sand & Gravel case, the Commission prescribed 2 cents on railroad equipment and 1½ cents on privately owned equipment. (Said document was received in evidence, marked "Ex. No. 57, Witness Roberts.") (Tr. 831.)

Cross-examination.

By Mr. Davis:

I do not contend that distance should be a major factor in determining rates within the Chicago district. By Ex. 55 I undertook to show service that carriers undertook to perform at the rate in existence at the time they built into our plant. (Tr. 832.) My conclusion is that our rates are not only high enough from the standpoint of distance, but high enough from other standpoints I mentioned. We advocate that the Chicago district should have a uniform rate basis. So far as distance is concerned, I am. My [fol. 736] testimony is confined to the movement of coal

tar from the points indicated, and I am merely making the statement that if the carriers want this traffic they must maintain the present rates. That is all I am specializing in. My contention is that our rates should not be changed even though facts show that rates of 3 cents for single-line, 3½ cents for two lines and 4 cents for 3 or more lines are justified.

Referring to Ex. 56, the normal basis for road-haul rates (Tr. 834) is 70 per cent of 6th class in Central Freight Association territory, which I think would make higher than 3, 3½ and 4 cents as proposed by the carriers here, though I do not have the tariffs before me. In Ex. 56 I make comparison with rates in the Eastern district, but they are all switching rates. The line-haul rate from East Boston to Forest Hills is the 6th class rate of 10 cents; tar is 7 cents per hundred pounds. (Tr. 835) The 6th class rate in Central Freight Association tariff for 27 miles is 9 cents, and 70 per cent is 6.3 cents. The classification is higher in New England territory than in Central Freight Association territory. The rates shown in Ex. 56 are not all reciprocal switching rates. All on page 1 are not. If you mean by "reciprocal" where the rate is put in on the average principle and absorbed by the line-haul carrier, those are not reciprocal rates. They are local movements. Buffalo to Harriet, on page 2, is a local movement, and so is the Rochester rate. Most of them are rates we pay on our own traffic. On page 1 there are three 2-line movements, and the rest are single-line. On page 2 there is one two-line movement, and the rest are single-line. (Tr. 837.) Page 2, from Buffalo Creek industries to Harriet, moves Buffalo Creek and New York Central. All inbound shipments of tar move in our private cars where shipped by rail. Carriers have no equipment to furnish for tar. [fol. 737] My statement was that some of the carriers have expressed a willingness to maintain the present rates, and they are parties to the tariffs under suspension. (Tr. 838.) As to shipments moving in Chicago that we are discussing here, we give the rate applying for three-line movements where the Chicago & Illinois Western is involved. There is no difference in their handling other traffic. The tanks we use are owned by our company, approximately 3,000 in number, and we do lease cars also at about $35.00 per month. (Tr. 839.) That would be on

a movement from the By-Products Coke. We do not receive a cent of mileage from the carriers, and as far as line-haul traffic is concerned, the allowance represents about 40 per cent of the maintenance costs on our equipment. (Tr. 839-840.)

JOHN W. BINGHAM was sworn and testified as follows:

Direct examination.

By Mr. Walter:

An traffic manager, Corn Products, Refining Company, which manufactures starch, corn syrup, corn oil, corn sugar, gluten feed and other corn products, with a plant at Argo, Illinois, within the Chicago switching district, on the Indiana Harbor Belt, Belt Railway, and Chicago & Alton. (Tr. 842.) The plant capacity is 80,000 bushels of corn per day. We have 17 miles of track, representing $630,000.00 investment, all owned and maintained by the company, which is conducive to economical plant operation and to efficient switching service for carriers. Must of this trackage is necessary for plant operation, but considerable is used by the carriers for their convenience in classifying cars inside our yards, which service, yard space and trackage are on our own property. This trackage is used by the carriers for all our business, and none of which is set aside exclusively for switching district business, that [fol. 738] being a very small part of the total carload movement, approximating but 13 per cent of the large volume flowing in and out of our plant that is subject to attractive road-haul revenues, which compared with the proportionately small movement in the Chicago district, should enable the carriers to perform the latter at very nominal cost. (Tr. 843.) The Belt Railway, under agreement with the other two carriers does all switching inside our yard and bills the other roads at actual cost per car. By plant switching is meant break up of cuts, spotting of cars at various loading and unloading platforms and switching incidental to daily operation of the plant. All roads bring in their own deliveries and take outbound loads which they switch and classify in our yard. Corn is the inbound movement and comes in lots of 25 or more cars, whether re-

ceived in road haul or from elevators in the Chicago District. A check from July 1st, 1925 of our business and the periods during that time corresponding with those used by carriers for their cost and traffic study and find the car load movement compares favorably with perhaps one or two exceptions. (Tr. 844.) During the time mentioned, 50,000 carloads moved in and out of our plant, the two movements being about equal; 6,822 cars moved to and from points in the Chicago Switching District, about 13%. Of these, 4,740 cars were corn from Elevators in the Chicago District and 2,082 moved outbound to consignees in the Switching District. We compete with similar manufacturers located at Cedar Rapids, Clinton and Keokuk, Iowa; Granite City and Decatur, Illinois, and are at a decided disadvantage in making delivery to consignees in the Chicago Switching District. Our corn is purchased on the Chicago Board of Trade and the price includes freight rate, which is after inspection, ordered to Argo with switching absorbed and to that point has paid the flat Chicago [fol. 739] grain rate. (Tr. 845.) This grain is milled and the products which are shipped to the Chicago district pays full published rate from Argo to delivery points. (Tr. 845.) Our competitors at points previously named can purchase their corn at the same points where our corn originates either in Iowa or at the Missouri river and under transit privileges, mill the same and ship the products to the same consignees in the Chicago district at the flat Chicago grain rate, while we must pay in addition the Chicago switching rate. That disadvantage will increase if the increased switching rates are allowed. The large number of cars moving from our plant in switching service where we pay minimum on 60,000 pounds, but actual weight is less, aggravates the situation. The manufactured product of our competitors is subject to classification minimum and moves to the Chicago District at the rate on actual weight, due to ability to load to classification minima at or less than switching rate minima. The former range between 36,000 and 40,000 pounds. (Tr. 846.) In the period mentioned, 2,082 cars moved outbound for Chicago deliveries of which 1,058 cars averaged 48,000 pounds. Under suspended rates, our freight charges would have been increased $12,066.57, based on 236 cars single line haul, averaging 46,657 pounds and 305 cars average weight 74,588 pounds, the former

taking ½¢ increase on the 60,000 pound minimum and 305 cars ½¢ on actual weight, gives total of proposed advance $1,845.65. (Tr. 847.) The proposed increase is 1¢ per 100 on two line hauls and based on 819 cars under the 60,000 pound minimum and 724 cars of average weight of 73,301 pounds, the total proposed two line advance in revenue would be $10,220.92. We pay freight on actual rate of grain to our plant which shrinks in manufacture, while our competitors, taking same shrinkage at their rates, save freight charges thereon between their plants and the Chi- [fol. 740] cago switching district. (Tr. 848.) To save time, I will not offer an exhibit or explain how this feature works out because I concur in the statement and examples to be put in by Mr. C. D. Miller, Traffic Manager of the American Maize Corporation, who has a plant located at Roby, Indiana, in the Chicago Switching District, whose situation is exactly similar to ours and who will immediately follow me to the stand. (Tr. 848.) Our situation regarding the purchase of corn at Chicago, while our competitors purchase at points of origin, is one that always exists between the intermediate manufacturer and the point where the rate breaks. (Tr. 849.) And our competitors are given transit to equalize their position with the rate breaking points but in our instance, the transit arrangements of our competitors give them an actual advantage. (Tr. 850.) Under the transit arrangement, our competitors get the advantage because of their location but the transit privilege should not give that advantage because of their location. (Tr. 851.) The shrinkage is not a big disadvantage but the switching is. We think that instead of advancing the freight rates on our cars in the switching district, the carriers should remove the existing discrimination against us by authorizing milling in transit at Argo on milling destined to the Chicago switching district and arrange to absorb crosstown switching on grain moving to our plant from elevators within the district.

Taking Iowa corn, it is milled either at Clinton or Chicago and the products shipped to consignees in the switching district. The corn moving to Clinton requires unloading, reloading of product and shipping to the same consignee to which we ship but our competitor, (Tr. 852) at Clinton pays the flat Chicago rate. We pay the flat Chicago rate on the total amount of corn, milling it at our plant,

which compares identically at Clinton. It is then loaded [fol. 741] as product and shipped to the same consignee in the Chicago switching district and we pay the present switching rate or will pay the proposed 3½¢ rate on our product.

The present milling and transit arrangement of our competitors would discriminate against us if our switching rate was only 1¢. Our present rates or the proposed rate aggravate that condition in the matter of degree and that situation has existed even before the proposal to increase the switching rates. (Tr. 853-854.)

Cross-examination.

By Mr. Davis:

If the Consumers Company had a car of coal shipped to their west plant they would pay the Chicago rate from any given point of origin, and if we ordered a car from the Consumers Company to our plant we would pay the Chicago switching rate on it and would be the same as the case of grain we buy on the Chicago Board of Trade and have switched to our plant; but I do not see how coal can be compared with grain. (Tr. 855-856.) We have a plant at Kansas City and can ship to Chicago the same as Cedar Rapids, but I am talking about Argo in this district. We believe, because we have attractive outbound shipments in road-haul, that switching being incidental to road-haul business, should influence the carriers in making a lower rate within the Chicago district than would otherwise exist. The price we pay for grain purchased on the Chicago Board of Trade includes the freight from point of origin, and in that form we pay it. (Tr. 857-858.) The freight rate is included in the price we have to pay. The producer receives something less than the Chicago market price. (Tr. 858.) I think the line-haul business of the tenant lines of the Belt Railway should have some influence on the Belt's switching rates. (Tr. 859.) Our principal products are starch and syrup, and our competitors have transit ar- [fol. 742] rangements under which they receive corn and produce syrup. (Tr. 859.)

C. D. Miller, called in behalf of shippers, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am traffic manager of American Maize Products Company at Chicago, Illinois, having plant at Roby, Indiana, in the Chicago Switching district, served by the Pennsylvania Railroad and the Indiana Harbor Belt. (Tr. 860.) We own and maintain 3 miles of track, an investment of $120,000.00. Car spotting at our plant is done by the Pennsylvania Railroad. We mill from corn, starch, dextrine, corn syrup unmixed, corn sugar, gluten feed, germ meal, and corn oil, and our rate situation is identical with that of the Corn Products Refining Company at Argo, both points being in the Chicago switching district. We are at a decided disadvantage compared with mills located outside that district.

Chairman Campbell: Now, Mr. Walter, let me understand this situation. The question of milling in transit is not in this case.

Mr. Walter: Not at all; but we simply desire to show that increased shipping rates will increase the existing disadvantage. (Tr. 861-862.)

The Witness (continuing): We handle 20,000 cars of freight annually in and out of our plant. During 1926 in the Chicago switching district we shipped 1402 cars of corn products. (Tr. 862.) Sixty-seven per cent of single-line shipments were below the 60,000-pound minimum at the 2½ cent rate, on which we paid and absorbed an average rate of 3.13 cents per hundred pounds. Sixty-eight per cent single-line shipments paying 3 cents were below tariff [fol. 743] minimum weight, on which we paid average rate 3.79 cents per hundred. Forty-two per cent two-line switching district shipments under 2½ cent rate were below tariff minimum, and average rate paid was 3.4 cents per hundred pounds. These average rates resulted to a great extent from competition of mills outside the Chicago switching district enjoying the lower classification minimum. We paid approximately $24,000.00 switching charges during the year 1926, which would be increased $4,000.00 at the proposed rates. To points in the Chicago switching district, with few exceptions, we pay switching charges in addition to freight paid by competitors outside the Chi-

cago switching district. (Tr. 863.) Transit provisions for mills outside the switching district permit application balance of corn rate to Chicago on corn products except corn oil, while we pay the corn rate to Chicago and product rate out for Chicago switching district deliveries.

Corn prices at country elevators from which competing mills draw supplies are generally the Chicago market prices, less the freight rate to Chicago. One hundred thousand pounds of corn produces, exclusive of corn oil, 85,280 pounds of starch or dextrine, including corn germ meal and gluten feed. Converting starch or dextrine into corn syrup unmixed or corn sugar, excluding corn oil, would produce 100,420 pounds. (Tr. 864.) Because of varying conditions, including high moisture corn, and the varying conditions determining the different products, we cannot get accurate total average yield. The average proportions used are based on our operations and believed to be representative. (Tr. 865.)

Chairman Campbell: It must be thoroughly understood that the Commission is not going to take this testimony regarding transit conditions and weigh it or determine whether or not any switching rate is in violation of Section 3.

[fol. 744] Mr. Walter: That is right, Mr. Chairman; we will not present that question in this case. (Tr. 866.)

The Witness (continuing): Grain is to present its own situation. Ours are grain products, and we are not asking for the exclusion of these commodities from the all-commodity basis. (Tr. 867.) Based on 2 cars of corn syrup and/or corn sugar to 1 car of starch, the average yield, on this proportion of grind was 95,373 pounds, excluding corn oil of 2,480 pounds, or grand total of 97,853 pounds. Assuming the corn was shipped from Seymour, Iowa on the Rock Island, the same 100,000 pounds of corn, we and interior mills pay the same price at the country elevator. From Seymour, Iowa to Chicago (Gresham) via the Rock Island the rate is 18½ cents, 340 miles; Seymour, Iowa to Keokuk the rate is 11½ cents, distance 121 miles, and from Seymour to Chicago via Keokuk is 467 miles. From Seymour to Chicago (Gresham) we would pay $185.00 freight on 100,000 pounds; and to make delivery of the products of that from our plant to a point in the Chicago switching

district, the switching rate is 2½ cents on the 97,853 pounds and we would pay switching charges of $24.46, or a total of $209.46. (Tr. 868.) The freight from Seymour to Keokuk is $115.00, and average product yield, except corn oil, being 95,373 pounds, would move to Chicago on the balance of the corn rate from Seymour, or $66.76 for the haul from Keokuk to Chicago (Gresham.) Transit does not apply on corn oil, and it takes a 16-cent rate from Keokuk to Chicago, making the total freight paid by the Keokuk mill $185.73 on the corn originating at Seymour. (Tr. 869.) [fol. 745] The car load rate on corn originating at Grinnell, Iowa, moving to Chicago, (Gresham) is 17½¢, via the Rock Island, distance 293 miles. From Grinnell to Clinton, the rate is 12½¢; Grinnell to Chicago, Illinois, (Gresham) via Clinton is 404 miles. Using the same tonnage, we would pay the rate on corn from Grinnell to Chicago, $175.00 and switching $24.46. (Tr. 869.) Clinton would pay 12½¢ corn from Grinnell to Clinton, $125.00 and the balance of the corn rate to Chicago on the products, excepting corn oil and its total charges on corn and products would be $176.66 or $22.80 less than we pay. Using the same illustration, with the corn milled at Cedar Rapids, the mill there would pay a total of freight on corn and products, $176.21 or $23.25 less than we pay. Similar illustrations may be used taking Vincent, Iowa corn milled at Cedar Rapids, Albia corn milled at Keokuk and Winthrop corn milled at Cedar Rapids, Merrill corn milled at Pekin, Illinois, in all of which instances we pay more than the outside mills pay on the corn and the products shipped out. (Tr. 871.) In these illustrations we can use Chicago switching rate of 2½¢ but if the average rate paid by us was used, due to meeting competition, of lower minima from outside mills, our disadvantage would be increased accordingly. (Tr. 871.) Average car weight of corn to our plant in September, October and November, 1927, was 84,376 pounds. Average weight of products during those months was 50,483 pounds. Using these round figures, there is 168% of car mile service through milling stations to Chicago on products compared with 100% on corn to Chicago.

Crosstown switching is absorbed under milling in transit rules in some switching districts. It is done at St. Louis, and East St. Louis, where milled on the rails of the Chicago, Burlington & Quincy Railroad and others, the absorp-

tion being by the Wabash. (Tr. 872.) The Northwestern absorbs cross-town switching on sugar, originating on its and connecting lines West of the Mississippi River and [fol. 746] stored in warehouses at Chicago for subsequent movement to the Chicago switching district. The remedy for this disparity would be the establishment of transit arrangements at Roby and Argo, permitting us to draw corn from West of the Mississippi River and ship products to Chicago switching district on the same basis as Interior mills. I concur in Mr. J. W. Bingham's testimony.

Chairman Campbell: You understand the matter of transit at Argo is not in this case.

Mr. Walter: That is correct. (Tr. 873.)

Chairman Campbell: Have you not put in sufficient? Will not your witnesses on this or the malt situation be rather along the same line?

Mr. Walter: Perhaps I could make an additional statement in connection with that which would suffice if the respondents will accept it. With reference to Malt, Barley can move from Minneapolis at 11½¢ to Chicago, Milwaukee and Manitowoc, all taking the same rate. When it is converted into malt at Milwaukee, it may move to any destination in the Chicago district on the balance of the 11½¢ rate while we pay the same rate for the long haul and then pay the switching rate in addition.

Chairman Campbell: Are any objections to that statement going into the record?

Mr. Davis: There is no dispute as to the fact of transit but we do not know that the rate is 11½¢. (Tr. 874.)

The Witness (continuing): We do not claim that we can not load our commodities to the carload minimum and the fact that we do not, is due to competition of outside mills where they can ship on lower minima. Where the consignee can buy a car of 36,000 pounds from others, he will not buy more from us and we have to pay on 60,000 pounds to the district.

[fol. 747] Chairman Campbell: Who is the next witness?

H. J. Campbell: Now, Commissioner, to shorten the testimony as much as possible, we have another witness, Mr. C. A. Witt, connected with the B. A. Eckert Milling Co., in the same situation as that testified to by Mr. Bingham and Mr. Miller, except that it mills wheat and rye. If respondents will concede if Mr. Witt testifies, he would corrob-

orate the testimony of the two witnesses who just proce-ded, we will not need to put him on. The Eckert Company ships flour and products of wheat and Rye.

Mr. Davis: They would be the same then if they are in the district.

Mr. H. J. Campbell: Yes, they are in the district.

Mr. Davis: All right.

Chairman Campbell: That will shorten it. (Tr. 876.)

B. J. Roggenbuck, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am assistant traffic manager of John J. Jelke Co., and Geo. P. Braun Co., of Chicago. (Tr. 877.) The Jelke Co., of which the Braun Co., is a subsidiary is at Polk and Washtenaw Ave., Chicago and is served by the Chicago and Northwestern. We manufacture oleomargerine, lard, bakers shortening, condensed and evaporated milk. We use raw materials consisting of coal, lumber, raw leaf lard, olio oils, vegetable oils and other animal and vegetable fats, salt, fiber board box cartons, butter tubs and milk, received in car load quantities. Our coal comes from Southern Illinois mines; the lumber for box material received from Chicago manufacturers and from points in states South of the Ohio River and from points on the Ohio River. Raw leaf lard comes principally from slaughter houses in territory in states between the Missouri and Mississippi Rivers, and occasionally from Eastern points such as Buf-[fol. 748] falo and Indianapolis; vegetable oil, including cocoanut, peanut and cotton seed oils come principally from the Pacific Coast, New Orleans and Eastern Seaboard markets. (Tr. 878.) Salt comes from Michigan mines. Fiber boxes from the Chicago district and points in Wisconsin and Michigan; Butter tubs come mostly from Illinois and occasionally from Central Freight Association territory; Milk comes principally from Fox River district in Illinois. All switching to and from our plant is done by Chicago & Northwestern Railway, and the total tonnage is from 3,000 to 4,000 cars annually. 50% of inbound raw material origi-

nates in that part of the Chicago district served exclusively by the Chicago Junction Railway, commonly known as the stock yards district.. Our commodities are perishable both as to raw materials and finished product and to meet our needs, the Northwestern makes two switches at our plant in 24 hours. (Tr. 879.) We are approximately ¾ of a mile from the Wood Street yards, at which our freight is received and distributed. (Tr. 879.) A great portion of traffic originating at Western points is not handled through Wood Street because the freight, being perishable, the Northwestern, for its convenience and ours, discharges these cars from through trains at Taylor St., because all trains must make complete stop at that point before crossing tracks of other lines entering Wood Street yards. These trains often times wait 45 minutes to cross these tracks and setting out cars in this idle time is considerable saving to the carrier, where the cars would otherwise go to the yards and be back hauled for the usual handling. Taylor Street is a block from our plant and the regular switching crews pick these cars up at Taylor Street without any additional time or expense. Our property, including tracks owned by the company, established to make more efficient the handling of cars and products is worth [fol. 749] about $50,000.00. (Tr. 880.) The railroad tracks reaching our tracks are nothing elaborate and do not represent a great outlay for the benefit of our industry or those included in the immediate vicinity. The switching rates in the past and at present have aided materially in permitting our company to build up a substantial business, as well as the shippers furnishing our raw materials originating in the Chicago district. (Tr. 881.) If the proposed switching increases become effective it will be impossible to spread the increased transportation cost to the individual unit on which these prices are figured. Either shipper or consignee will be obliged to shrink their profits, if they have any. As to raw materials, it is unlikely the shipper will assume this additional burden. We have been at this location approximately 20 years and that particular district is not congested in the sense there is not a free movement, and the heavy volume of traffic is handled promptly in an ordinary manner without large expense. (Tr. 881.)

Recently the principal switching and interchanging of freight for all industries in Chicago on the Chicago & North

Western has been done at Proviso, its new $16,000,000 terminal, and under this operation we have not seen anything extraordinary in the handling of our cars in either direction. The change caused considerable confusion to the industries and to the railroad. There were delays that cannot be chargeable to congestion or physical limitation of railroad operation. For several years we moved leaf lard from Austin, Minnesota, via the Chicago Great Western, delivery at Wood Street on the Chicago & North Western via Baltimore & Ohio Chicago Terminal. On arrival at Chicago in outer yards of the Great Western the second noon after shipment, that carrier would move the cars to its connection with the Baltimore & Ohio Chicago Terminal at Homan Avenue, and the latter to its Robey Street yard, requiring 12 hours or more to make delivery to the Chicago [fol. 750] & North Western covering a distance of less than ¼ mile. (Tr. 882.) This operation required an unnecessary intermediate switching carrier. Interchange between the Chicago & North Western and Chicago, Milwaukee & St. Paul at Western Avenue was not shown in the tariff, but these roads finally permitted the shipments to be interchanged at Western Avenue, a mile from our plant, which has been done the past 2½ years, thus saving 24 hours' time in receipt of our cars.

Circuitous switching hauls are unnecessary in many instances on traffic from the Wabash, Monon, New York Central, Erie and Pennsylvania Railroads. Cars from these lines are moved to 40th Street via the Belt and rehandled at Wood Street. A much more convenient three-line haul is via the Chicago Junction, which would eliminate 40th Street and considerable time effort. (Tr. 883.) The Chicago & North Western at present make two pick ups every day from Chicago River & Indiana yards for all cars delivered by such lines that have operating arrangements for the particular delivery. This service is very satisfactory and other traffic should be allowed to flow freely through this gateway. Traffic from Illinois Central Railroad is forced via the Belt to 40th Street instead of using direct delivery available between Illinois Central and Chicago & North Western at Wood Street through what is known as Air Line branch, running from Jackson to Wood Street. The Illinois Central is permitted by the North Western to make deliveries of perishable articles via the Air Line (Tr.

884), but all dead freight is required to move via the Belt at Clearing and thence to 40th Street for Wood Street. We had difficulty with leaf lard shipments from Waterloo originating on the Illinois Central, resulting from delay at Chicago by reason of moving via the Belt through the 40th Street gateway, which are now coming direct via the Air Line, thus saving 24 hours' time. This movement elimi- [fol. 751] nates the intermediate carrier and reduces absorption expense of the road-haul carrier. The present switching operation is not the most efficient, and carriers are attempting to penalize us for their failure to take advantage of some of the natural actual conditions existing. (Tr. 885.)

The Chicago & North Western has a stock run that stops at Taylor Street before going to the stockyards, and while there takes our loaded cars and hauls them direct to Chicago Junction yards for interchange with the Eastern lines, being done only at the expense of what may be called idle time. These road-haul trains do not enter Wood Street for subsequent classification and handling. This should be given consideration in determining fair cost of switching at our plant. Cars which we receive daily from packing industries at the Union Stockyards move via the Chicago Junction Railway to 47th Street, and the Chicago & North Western pulls them twice a day. On train pick-up these cars go either to 40th Street or Proviso; Wood Street cars are set out at Madison Street and sometimes Western Avenue. The switching crew at Wood Street sometimes runs to Madison and brings these cars back. On having trains come to Wood Street, Western Avenue trains put these cars at the head end and set them out at Taylor Street. Ofttimes the Western Avenue trains have cars originating at points beyond Chicago and the crew sets them out in addition to the others mentioned. (Tr. 886.)

Cars at 47th Street on the Junction should be there classified and the trains held accordingly. The Chicago & North Western now and for some time has often allowed road-haul trains to go beyond Proviso with either Western Avenue, 40th Street, or Stockyards shipments; and in such cases cars consigned to us are set out at Taylor Street and which eliminates terminal switching expense at Proviso and at Wood Street almost in its entirety.

[fol. 752] Our outbound shipments move principally eastbound and delivery is made via the Stockyards. Empties

returned are delivered to the Belt at Clearing for 40th Street, handled to us at Wood Street, and sometimes move to Proviso for handling at that point back to the Wood Street yard. The carriers' Ex. 7, showing average operating cost one-, two- and three-line hauls under the cost study for Chicago switching, carries various erroneous items, the same subject to question. (Tr. 887.)

Page 3, group 28, shows 80 cars of animal products. Our actual records show we received 52 cars of this grouping, originating in the Chicago district. The exhibit shows 59,439 pounds average weight, while all cars are billed at 60,000 pounds minimum. Using the actual minimum on which charge is collected would reduce cost charges proportionately. The 52 cars does not include 35 of animal products that were received during the same period but originating at points outside the district. This is true of the salt group, No. 38, covering 9 cars that originated beyond the district. From Chicago Cold Storage Company at 15th and State Streets and Indiana Avenue we get neutral lard that moves spasmodically. The industry is on the Air Line, which serves under joint operation the Michigan Southern, the Illinois Central, Chicago, Burlington & Quincy, and Chicago & North Western (Tr. 888); the four lines sharing the cost, but each doing its individual switching. About 150 cars per year are stored at that particular point, moving around 5 or 10 per week in and outbound. A saving in switching costs would result if one line performed the switching for the four lines.

The United States Department of Agriculture, Weather Bureau, Records Division, shows the average mean temperatures, lowest and highest, by months, in Chicago for the year 1927 as follows: January, average mean 25, lowest -9, highest 42; February, average mean 35, lowest 16, highest 56; March, average mean 42, lowest 24, highest 71; [fol. 753] April, average mean 48, lowest 31, highest 79; May, average mean 57, lowest 41, highest 86; June, average mean 65, lowest 47, highest 94; July, average mean 72, lowest 56, highest 95; August, average mean 67, lowest 55, highest 86; September, average mean 69, lowest 41, highest 95; October, average mean 58, lowest 40, highest 83; November, average mean 43, lowest 23, highest 75; December, average mean 27, lowest -1, highest 52. (Tr. 889-890.)

The Chicago & North Western at various times has empty cars subject to repair in some manner along the industry track serving these particular industries, including ours. The switching crews with a regular string of cars for delivery must make complete switch of all the empties standing there to begin entries to some of the industries. The storage of these empties seriously hampers the switching crews in making deliveries to industries through the additional time required for switching the empty box and stock cars around, and which should not be chargeable to switching at industrial plants. (Tr. 890.)

Typical long haul switching which could be avoided is shown by International—Great Northern car 14133, loaded by National Box Company at 38th and Racine Avenue, served by the Chicago Junction, which received it at noon May 16, 1928, and moved it to its State line at 40th and Racine, 2 blocks from the plant, where it was left. It was then taken by another engine with others cars to 47th and Racine, about 1 mile away, in the district where cars are placed for the Chicago & North Western. The latter hauled it about 20 miles to Proviso, passing through Wood Street. After further classification at Proviso it was back-hauled 13 miles to Taylor Street for delivery to us. This movement eliminated Wood Street; but total car detention, conservatively figured at 4¼ days, using that route, could have been reduced to 1¾ days. (Tr. 891.) Based on my [fol. 754] personal experience and observation for a period of five years, there has been nothing extraordinary required in handling trains in winter months. There are only two cases involving any delay, and that was not more than 2 or 3 hours. One was caused by the engine devoted principally to our service freezing up over night in the roundhouse, and the other was delay attributable to snow. Maintenance crews have done little work in removing snow and ice or sleet from the tracks. The private cars of Armour, Swift and Wilson handled in the stockyards by the Chicago Junction are loaded to maximum capacity, with no allowance made to the owner by the carrier. (Tr. 892.)

Cross-examination.

By Mr. Orcutt:

The shipments from Albert Lea, Waterloo, and Fox River Valley are long-haul movements, and the switching

involved on such movements is not involved in this case. (Tr. 893.) The cars set out at Taylor Street, which are a great number, materially reduce the classification and handling charges of the respective yards. The cars referred to moved during the test period, and if any cars included in the cost study were set out at Taylor Street, that would be reflected in the cost. (Tr. 894.)

My position requires me to observe all work incidental to handling cars in and out of our plants. Have been around the Chicago Terminal, but cannot say the times per week that I go around terminals following the cars, but I have been in the respective yards; at Wood Street almost every day in the week, which is in the vicinity of Western Avenue and of that entire district. Have not been in the Chicago Junction yard for a long time. Have been with the Jelke and Braun companies for 5 years. Prior to that with a roofing company and prior thereto with the Chicago, Milwaukee & St. Paul Railway in various capacities, ending up in the commerce department under the super-[fol. 755] vision of Mr. Soergel, which work ended in 1923 or 1924. (Tr. 895-896.) Worked in the general office studying tariffs, but was never in the operating department of the St. Paul Railway. (Tr. 896.)

J. S. Brown was duly sworn and testified as follows:

Direct examination.

By Mr. H. J. Campbell:

Am manager of transportation department of Chicago Board of Trade of the City of Chicago, and have been for about 14 years. Prior to that had considerable railroad experience, all in the traffic department.

The effect of General Order No. 28 upon switching rates in use here is shown in blanket supplements issued by the Rock Island to all tariffs in effect on June 24, 1918, it being identical with all blanket supplements issued by all other railroads pursuant to that order, and which may be identified by reference page 11, being Supplement 12 to I. C. C. No. 9996. There were probably 100 or 200 other tariffs supplemented. This supplement in substance provided that

all switching rates incident to road-haul, that is switching charges or rates which road-haul carriers absorbed, either in or out, were not to be increased, but local switching rates were increased, and that provision is on page 2 of the supplement under the head of "Exceptions," and is as follows: "This supplement does not increase charges for terminal services or facilities, switching when performed in connection with road haul, weighing, demurrage, car service, transfer, diversion, reconsignment, refrigeration, icing, storage, elevation, or other special service." (Tr. 898.)

The Lowrey intra-district rates, Tariff 21 Series, on June 24, 1918, were 1½ cents per 100 pounds for two-line hauls and 2 cents for three lines, minimum 60,000 pounds. [fol. 756] General Order 28 on June 25, 1918, increased these rates 25 per cent, or ½ cent on each of the two items; the two-line rate went to 2 cents and the three-line rate to 2½ cents. The 40 per cent increase August 26, 1920, made the two-line rate 3 cents and the three-line rate 3½ cents. A 10 per cent reduction on January 1, 1922, made the two-line rate 2½ cents and the three-line rate 3 cents, which are the rates in effect today. Since June 24, 1918, two-line rates have been increased 66 2-3 per cent and three lines 50 per cent. If the proposed increases become effective the rates of June 24, 1918, will be increased 133 per cent for two-line hauls and 100 per cent for three-line. (Tr. 899.) The switching rates which under the 40 per cent increase became 2 cents were not reduced 10 per cent because that reduction equaled .02 cents, making 1.8 cents, and the rule relative to disposal of fractions caused the rate to remain at 2 cents.

Car rates on grain for switching in the Chicago district varied on June 24, 1918, just as they do today. Taking what are known as connecting-line switching rates, which a switching road charges from connection to the elevator or mill, or from an elevator or mill to a connecting line within the Chicago district, the inbound switching rate quite generally in effect on June 24, 1918, was $3.00 per car, which became $4.00 under General Order 28, $5.50 under the 40 per cent increase, and $4.95 under the 10 per cent reduction. The outbound switching rate on June 24, 1918, from elevator or mill to a connecting line on railroads such as the Belt or Chicago, Burlington & Quincy, for example, was

$4.50 per car, which became $5.50 under General Order 28, and with the 40 per cent increase $7.50, and under the 10 per cent reduction $6.75 per car. (Tr. 900.)

[fol. 757] The membership of the Chicago Board of Trade includes persons, firms or corporations dealing in grain and grain products, as well as manufacturers such as Corn Products Refining Company, the American Maize Products Company, maltsters, another quite important group, the animal and poultry feed manufacturers, and seed companies. Grain product rates were increased and are under suspension, but with minor exceptions rates on grain were brought into the case on the Commission's own motion. (Tr. 901.)

Speaking of grain products, they are quite generally today in the Lowrey Tariff 21 Series. The Chicago Board of Trade filed separate application for suspension of these increased rates, as well as joining with other shippers in a general petition for suspension. Our members are chiefly interested in grain products such as flour and other products of wheat and rye; starch, gluten feed, gluten meal, corn syrup, corn syrup unmixed (glucose), corn sugar, corn oil, and other products of corn; salt, animal and poultry feeds, and various ingredients entering into their manufacture, and in seeds, not including grain screenings, which are classified with grain. Millers, maltsters and feed manufacturers are likewise interested in switching rates on supplies such as machinery, bags, etc. (Tr. 902.) Their interests are interwoven with those of other protestants who are opposing the increased rates. In some instances the suspended rates were subject to the 60,000-pound minimum, which is not the case with the present rates; some carrying minimum weights as low as 30,000 pounds, and presumably these were increased to obviate violations of the 4th section.

Increases have been made covering a small movement of grain from elevator to team tracks, and in some instances from elevators to small industries like feed stores, from 2½ cents to 3 cents, etc., to which we object in so far as they apply to grain; believing that grain rates should not have been increased. Crosstown or industrial switching [fol. 758] at other large grain markets in milling centers exactly similar to crosstown switching here, is absorbed. It is paid in some instances just as we pay it here, but

instead of the carriers retaining it, they absorb it. (Tr. 903.)

We also protest against the increase in the road minimum rate and minimum charge per car that comes under Lowrey Tariff 20 Series, a very important thing to which I will refer later.

The minimum applicable to the hundred-pound rates in which our millers, maltsters and feed manufacturers are interested is 60,000 pounds. Their competitors from the outside to the same consignees have a 40,000-pound minimum. The three-line rate of 4 cents, if effective, makes charge $24.00 per car at Chicago, and on 40,000 pounds equals 6 cents per hundred, or higher than the rate between Chicago and Milwaukee, and 50 per cent higher than the rate which the Chicago & North Western voluntarily established from Sioux City to Omaha and Council Bluffs very recently. Chicago wheat and rye millers, feed manufacturers and corn manufacturers, in order to keep their plants running, often find it necessary to purchase grain in storage here at the elevators, which constitutes one of the principal crosstown movements and occurs when quantity or quality of grains coming in do not meet their requirements. (Tr. 904.)

The principal parties affected by the increase in the 100-pound basis, Lowrey Tariff 21, are B. A. Eckert Milling Company; Washburne-Crosby Company, millers of wheat and rye flour, and offal such as bran, middlings and shorts, which are shipped crosstown to the feed manufacturers; Corn Products Refining Company; and American Maize Products Company. Feed manufacturers are J. J. Badenoch Company, Rosenbaum Brothers, Hales & Hunter, being also maltsters, Arcady Farms Milling Company, Albert Schwill & Company, being also maltsters, Albert Dickinson Seed Company; all located in Illinois. (Tr. 905.) At Hammond, Indiana, is the Nowak Milling Company, the Pratt Food Company, and Chapin & Company. There are [fol. 759] others receiving crosstown business, such as warehouses, small industries, bakeries, and chain stores such as the National Tea Company, etc. (Tr. 905-906.)

As to grain, the rates on the great bulk that is switched crosstown at Chicago have not been changed. They are not under suspension and are brought here by the Commission under its order for a general investigation. For that rea-

son we have gone to some length to show what crosstown absorptions are at other places. These crosstown grain switching rates are published by the individual carriers in individual tariffs, and we pay such railroad its local or connecting-line switching rates, which are not always uniform, as will be explained later. (Tr. 906.) Chicago is not a large milling center such as Minneapolis or Kansas City, but compares favorably with points like St. Louis. It does not compare with Cedar Rapids in some milling branches out there, although it does so far as the Corn Products and American Maize Products are concerned. Our feed manufacturers compete with Cedar Rapids to a very great extent.

The grain storage capacity in the Chicago district at the present time is 53,253,000 bushels, 19,130,000 of which is public storage. These elevators are under the jurisdiction of the State Registrar, and all grain going into them is subject to his jurisdiction, who is a part of the Department of Commerce. (Tr. 907.)

Elevator certificates are issued by the State Registrar for all grain going into the public elevators where the grain is not treated, but merely placed for storage, and it must be delivered on surrender of the elevator certificates to those who hold them. The greater part of this storage is devoted to grain merchandising; that is, handling the grain in and out, as distinguished from milling, and Chicago is the largest grain merchandising point in the country, as indicated by the large public storage space.

[fol. 760]. Along the Calumet River, beginning about 93d Street and extending south about 25 blocks to 118th, are elevators with over 25,000,000 bushels capacity, some being public and some private. The Washburne-Crosby mill is on the Calumet River, but I have not included its storage. All these elevators are on the west bank of the river except the Norris and the Keystone, which are on the east side, with a capacity of 3,450,000 bushels, which are served by the Pennsylvania and the Indiana Harbor Belt railroads, the former doing most of the switching. All elevators in the Calumet district can move their grain out by lake as well as by rail. (Tr. 908.)

The connecting line switching rates, that is, from a connection to an elevator or from an elevator to a connection are all for switching district delivery. The charge via nearly all of the trunk lines to elevators from connections with other lines is $4.95 per car. Practically all of the

belt lines make the same charge per car inbound though there are exceptions to this. The Chicago & Alton rate is $6.00 and the Chicago & Northwestern rate to Rockwell elevator is $6.75; New York Central charge is $3.60, which that road did not increase under general order 28. From elevators to connecting lines, the rates vary more than they do inbound. Most road haul carriers charge $4.95, except the Chicago & Alton with a charge of $6.00, the Burlington $6.75 and switching lines like the Chicago River & Indiana and the Belt Railway also charge $6.75. (Tr. 909.) Indiana Harbor Belt charges 2 cents per 100 pounds and gets no business except when somebody makes a mistake. In other cities, the outbound switching from an elevator will be higher than inbound via the same line, probably on the theory that when a railroad switching grain out of an elevator it will not get a haul on it; but switching into an elevator its chances are better for getting an outbound haul.

In addition to these connecting line switching rates there [fol. 761] are intermediate switching rates frequently paid on grain. The Belt Railway's loaded car charge is $5.40 and the Chicago, Burlington & Quincy, and Indiana Harbor Belt is $5.40, and the Pullman Railroad, sometimes used, charges $4.00, I think. The Baltimore & Ohio Chicago Terminal is not used much, if any, as an intermediate line on cross town grain. Single line rates also vary, where switching is between two elevators or two industries on the same railroad. (Tr. 910.) There is considerable intra-plant switching, that is, from a private plant to a public elevator. (Tr. 910.) Future deliveries under contract usually occur in May, July, September and December, though recently, March deliveries have been established and considerable of this grain moves from private to public elevators, at times with very short hauls as the plants are close together. Intraplant switching of grain is the same as other freight, namely $3.15 per car. Aside from that single line switching will vary from $4.95, from $6.30, from $8.10 and up to $9.90 per car and with others with a 2¢ rate per 100 pounds. The volume of cross town switching in Chicago varies because of two factors; first, amount of high moisture content grain that is received on the Chicago market which must be dried, consisting principally of corn. Chicago is the largest corn market in the world and our receipts vary. Some years not more than 100,000,000

bushels and others, almost 200,000,000. The second factor is intraplant switching for public delivery and for public delivery where the plants would not be close together. (Tr. 911.)

In the last seven years, cross town switching of grain including intraplant movement is about as follows:

[fol. 762] 1921, 20,851 cars.
1922, 14,745 cars.
1923, 14,586 cars.
1924, 19,672 cars.
1925, 25,891 cars.
1926, 26,865 cars.
1927, 18,655 cars.

1925 and 1926 are rather heavy and chiefly accounted for because the corn was very soft and this market can take it and put it in merchantable condition better than any other. Our large grinding plants consume 30,000,000 or more bushels per year. In those unusually heavy public deliveries, there may have been a lively future market on future contracts. We have had at times in Chicago, 40,000,000 bushels of all kinds of grain in storage. Sometimes, as much as 10,000,000 bushels of 2 kinds of grain. The stocks in Chicago on Saturday, April 14, 1928 were 24,000,000 million bushels plus, over 15,000,000 being corn. (Tr. 912.) In the previous year on April 16, 1927, nearly 31,000,000 bushels were in storage, 22,000,000 of which were corn. Last Saturday, 19,000,500 bushels were in storage, 12,000,000 being corn. May 14, 1927, 27,000,000 and more bushels were in storage, over 19,000,000 being corn.

The local consumption in Chicago of all grain converted into something else will run over 40,000,000 bushels annually and some of that amount may be shipped out in road haul movement. Within my knowledge there is not a plant in the Chicago district handling grain or grain products where there is a foot of rail used exclusively for cross town switching. It is used interchangeably with road haul and the road haul will far exceed, taking all together, the cross town switching, and cross town switching either follows or precedes a road haul.

The effect on prices, due to increase in cross town switching rates, taking corn for example, involves futures. Corn, reaching the Chicago market, is sold and the prices, like those of other grains, are based on the future. (Tr. 913.)

[fol. 763] Future prices, of course, are looking ahead. Cash prices will not always be under the futures, they will sometimes be above them. If there was a shortage of corn today, and a little later, a good crop seemed in prospect, futures would be under the cash price because large quantities would not be available before the new crop. In the last two years prior to this crop, the soft corn came in in unusual quantities and this market, regardless of its size, probably got less good quality than smaller markets because the shippers send poor corn here because of the facilities for taking care of it which keep the price up. Discounting price too much on poor quality corn affects the better quality; and as our prices are broadcast, other markets regardless of location will pay just enough to take it away from us if they want it, depending on their locations. There are times when they will not pay as much but that is usually in a locality where a long distance haul to Chicago would be required and the grain might not carry so well. (Tr. 914.) Further referring to the corn situation, when soft corn comes in, I will use an elevator in the Calumet district for illustration which has complete drying facilities but not adequate to dry all the corn which it wants to take off the market daily, therefore, it orders its corn to other elevators, principally malt houses which are no longer making malt, one being the Columbia Malting Company on the Pennsylvania Railroad and the New York Central. I will use the Norris Elevator, located on the Pennsylvania. The latter will order that corn to the Columbia Malting Co., and have it dried. Every malt house has corn drying facilities. The corn will remain in storage until the quantity in the Norris Elevator is sufficiently reduced to permit it to take it in its elevator and save paying storage to the Columbia Malting Co. In doing that, the Norris Elevator has to pay [fol. 764] cross town switching. If that was raised to 3¢ per 100 pounds, the only thing the buyer can do is to take it off the price, because when he ships, he cannot sell it in New England or abroad or anywhere else for more than his competitor anywhere else can sell it for. (Tr. 915.)

Assuming the switching charge from the Columbia Malting Company to the Norris elevator is $6.30 on an 80,000-pound car of corn, and that is increased to $24.00, somebody besides the Chicago elevator must pay for it, because his margin of profit is now small. He invested his money in wet corn, paid to have it dried and to have it shipped to

his elevator. But when it arrives he cannot get a better price for it than anybody else, and he cannot afford to pay the prices now being paid if his crosstown switching is increased. This is true of the wheat man and the corn products man. Chicago switching prices are watched by every other market, and when prices here go down theirs go down also; and Corn Products Company will not pay more for corn just because it was switched crosstown than it would pay for corn it could get elsewhere.

The Belt, the Chicago, Rock Island & Pacific, and the Pennsylvania are the roads in the Chicago district having heaviest crosstown movement of grain. They switch between their industries, and the Belt is an intermediate line. (T. 916.) The Indiana Harbor Belt is a heavy intermediate switching line inbound, but not outbound, also the Chicago & North Western at its terminal elevator at Irondale, 118th Street on the Calumet River, with 9,000,000 bushels' capacity, about half of it public, and it does a great deal of switching in and out of that elevator; otherwise that road does very little switching of grain. The Chicago, Milwaukee, & St. Paul & Pacific, the Chicago, Burlington & Quincy, and Chicago & Alton do considerable switching of grain. Others doing small amount are Chicago River & Indiana, [fol. 765] Chicago Junction, Michigan Central, New York Central, Erie, Illinois Central, Nickel Plate, and the Grand Trunk. There are a few railroads not in that list which have no elevators on their lines; one being the Chicago Great Western and another the Soo line. The Wabash has an elevator but does no crosstown switching. It is located on the Chicago Junction tracks. All these elevators are in Illinois except that of the New York Central, which is in Indiana between Whiting and Indiana Harbor; the Standard elevator at Hammond on the Pennsylvania and Indiana Harbor Belt, and those of feed manufacturers mentioned who are located at Hammond. (Tr. 917.)

We do not criticise the movement of routes used in handling grain across town. The Belt Railway does a large business which it handles as promptly as any road-haul, but from these route sheets we think more classifications appear than were absolutely necessary, unless the cars of grain or products are in a drag and it would cost more to set them out than it would to take them along.

I notice this one where the Belt Railway classified a car at 22d Street and again at Clearing. This is not under-

standable, although there may be a reason justifying it. A good reason would be on the side of economy. The Belt Railway is really the extension of 13 other carriers, to which it is indispensable because each could not have its own switching line. The Belt's facilities are used to the greatest advantage of the 13 owners, 12 of which take their drags to Clearing and bring the cars back. The Belt does not do intermediate switching. It classifies at Clearing; that is, the Rock Island does not do it, as I understand. (Tr. 918.) The 12 others quite generally use the rails of the Belt, which fairly constitutes the Belt's rails as an extension of their own. In saying we do not criticise routes, the reference was to the movement of grain from elevator to elevator.

There were some roundabout routes used; one was shown [fol. 766] by Mr. Oliver, that went through Clearing when it might have passed through South Deering. (Tr. 919.) Another was where the Rock Island might have taken it through the Calumet & Western. But in general, if the carriers desire to handle the business the way they are now, and the service is satisfactory, we do not criticise that unless cost of doing it is advanced as a reason for increasing the rates charged. There might be different arrangements made, especially along the Calumet River, for the better handling of this business. The Chicago Junction rails, under trackage arrangements by some of these railroads, are used less than formerly in interchange. (Tr. 919.) Whether less than formerly is because of the increased business of the Chicago Junction, I do not know.

Using the Pennsylvania Railroad as an example, when it began the operation of its 108th Street yard, it served the Norris and Keystone elevators on the east bank of the Calumet River; but industries have since grown up, but before that came about the 108th Street yard was used for storage. These route sheets show that cars are classified at 108th Street when they are brought to or taken from Colo. I do not know whether or not that promotes economy, but to me it seems probable it is due to increased business, not only of grain, but other, and so is unavoidable; and if so, the increased business ought to more than take care of increased cost. It may accrue in these additional classifications. The Belt Railway classifies in its South District yard in addition to its South Chicago general yard. The South District yard was formerly used for storage to

some extent, and it avoided another classification. (Tr. 920.) The Indiana Harbor Belt sometimes has pretty slow service on crosstown business. At times three days elapse in moving a car via the Indiana Harbor Belt; and it would not get much overhead business if it took that time to handle that class of business all of the time. That adds further expense that is set up against crosstown movement, [fol. 767] as against overhead.

As to the switching of grain, and products to some extent, it is not a case of one car at a time, but the movement of a good many at a time, not only crosstown but road-haul mixed in with it.

A route sheet here, Chicago & North Western 104, Indiana Harbor 1358, purports to show movement of corn with 6 car numbers noted on the sheet from Chicago & North Western terminal to Corn Products Refining Company at Argo. The 6 are sample car numbers. (Tr. 921.) The Corn Products Refining Company must go into the market to buy storage grain. During September, 1926, it bought 1,000,000 bushels of corn at the North Western elevator, moving 446 cars from Calumet City to Argo without classification, and the Corn Products Refining Company is pretty certain they were not classified after reaching Argo. They were merely shoved in and the Belt Railway picked them up and set them. Cars of corn moving in drags of 65 to 70 cars should not have that cost based on a smaller movement.

Route sheet Belt Railway 796, Indiana Harbor Belt 1202, in Chicago & Eastern Illinois car No. 37333, moved from Calumet elevator to Robey through Clearing. The sheet shows first classification in South Chicago district yard, Clearing, then interchanged with Indiana Harbor Belt at Argo, and classified there; classified at Blue Island, at Calumet and at Burnham: 4 times on the Indiana Harbor Belt. (Tr. 922.) This car could have moved directly south from Calumet City to South Deering, around through Calumet City and Burnham, the same as in the illustration on page 22 of Mr. Oliver's Ex. 13. This one supports Mr. Oliver's statement or his illustration.

Before detailing switching rates on grain and grain products in other cities, it is true that the great consuming territory for grain and grain products is in Eastern sea- [fol. 768] board territory and Eastern trunk line territory;

but of course there are other sections consuming large quantities. (Tr. 923.)

Chairman Campbell: Why can you not put them in in the shape of an exhibit and introduce them in that form?

The Witness: Well, Mr. Commissioner, we were taken somewhat by surprise the other day. Mr. Galligan stated that the railroads intended to put grain on the Lowrey basis. Up to that time we had confined our exhibits to showing crosstown switching is paid and retained by the railroads and not absorbed. By the competing markets it is absorbed, sometimes by the inbound line and more often by the outbound line, which brings in the question of discrimination, and which also brought in the question of reasonableness of switching rates here versus other places.

Chairman Campbell: I thought I made it plain that we were not going to consider this question of discrimination, except perhaps as a mere incident. If there is discrimination in the increased rates there is discrimination in the rates you now have, and we cannot go into these outside rates to any great extent.

Mr. H. J. Campbell: If your Honor please, on that point the Commission itself brought in those rates; that is, the carriers proposed no increase, and if we are going into the matter on the Commission's request, it seems we are entitled to show the whole situation.

Chairman Campbell: You are entitled to show the level of the rates, and you might be entitled to show that the increase possibly might affect the degree of discrimination, but you are not entitled to show that switching rates which are charged for grain or grain products or any other commodity now, create a discrimination; only that it will increase that discrimination. (Tr. 924-925.)

Mr. H. J. Campbell: But here you have opened up the whole situation with respect to these rates, and I think we [fol. 769] are entitled to show just what we are working under in the way of discrimination under present rates.

Chairman Campbell: If there are only a few of these, I will allow you to put them in. If there are very many, I will require that they be put in in the form of an exhibit. About how many will there be, Mr. Brown? (Tr. 925.)

The Witness (continuing): Well, I was going to read a few at Omaha, Kansas City, Minneapolis and St. Louis. These points are not included in the Exhibits I have dis-

tributed because those are prepared to show cross town switching at other cities.

Mr. Davis: I do not understand how the commission under its general order of investigation in this case could make an order permitting us to remove discrimination if such exists at St. Louis, Omaha, Kansas City and Minneapolis and I cannot see that it has any bearing in this case.

Chairman Campbell: Mr. Campbell, cannot this matter be prepared in the shape of an exhibit to be filed later? I do not like to have rates read in the record because of no adequate opportunity to examine them.

Mr. H. J. Campbell: We will be very glad to do that, Mr. Chairman.

Chairman Campbell: Very well; We will permit Mr. Brown to prepare an exhibit to show a limited number of those rates.

The Witness: All right. (Tr. 926.) Minneapolis, Omaha and Kansas City were selected in this connection because, next to Chicago, they are the largest primary terminal markets in this country other than Duluth, but the latter situation is different from any of the others because it draws its grain, largely wheat and rye, from the Northwest [fol. 770] and ships largely 90% by lake, but the other four are in strong competition with Chicago. They watch Chicago prices and follow them and those markets, hedging their grain, making their hedging largely in Chicago, though to some extent in their own markets. It is quite vital that you know what the switching rates are in those other markets. Cross town switching at Omaha, Kansas City and St. Louis cannot be much different than here in Chicago, if any, and the reason for showing those rates is to contrast them with what we are paying or to show where they have a higher rate than we have, why theirs is higher and what is more important than anything else, that the shipper does not pay it. (Tr. 927.)

The first Exhibit No. 58, consisting of 9 pages is headed "Absorption of cross town switching charges on grain and grain products at East St. Louis, Illinois, St. Louis, Missouri, and Granite City, Illinois."

Exhibit No. 59, consisting of 4 pages, is headed "Absorption of cross town switching charges on grain and grain products at Louisville, Kentucky."

Exhibit No. 60, consisting of 3 pages, is headed "Absorption of cross town switching charges on grain and grain products at Minneapolis, Minnesota and St. Paul, Minnesota."

Exhibit No. 61, consisting of 8 pages, is headed, "Absorption of cross town switching charges on grain and grain products at Kansas City, Missouri, Kansas City, Kansas, St. Joseph, Missouri and Leavenworth, Kansas."

Exhibit No. 62, the one that Mr. Davis takes exception to is headed, "Extract of testimony of O. T. Cull of the C. M. & St. P. Ry., I. C. C., Docket 15,037." (Tr. 929.)

Exhibit No. 63, refers to some absorptions of the Terminal Railroad Association of St. Louis and consists of 2 pages.

Exhibit No. 64, consisting of 3 pages is a copy of a letter that I wrote in 1923 as Chairman of Shippers Section of [fol. 771] Chicago Switching Conference Committee to Mr. Byers, at the time Chairman of the carriers section and this particular exhibit has to do with the suspended rate in Galligan's Tariff 20 Series.

Mr. Davis: The Honor please, that is a self serving declaration and, of course, is never allowed to be offered as evidence. All these exhibits go to the one question as I understand it, that of discrimination claimed because carriers absorb at Louisville, Kentucky and do not absorb at Chicago, the latter is injured. Says the same regarding Minneapolis through these Exhibits and the same at St. Louis and at Kansas City. He offers the extract from the testimony from the Witness Cull in the grain case on the question of discrimination and what the rate should be on grain, now involved in Docket 17,000, Part 7.

The Witness: No, it is not.

Chairman Campbell: Do you claim, Mr. Brown that conditions are identical at all these other points with what they are in Chicago?

The Witness: Where you have cross town switching in any market, Mr. Commissioner, it would be because of a movement of grain from an elevator to a mill or gluten feed or bran from a mill to a feed manufacturer which would be identical with the movement cross town here and an additional cross town movement that would be grain moved from private to public elevators. That is all cross town in those other places, just as here. We pay it here and it is

never returned. These other places, markets with which we compete pay it and it is returned to them by one or more of the carriers. (Tr. 931.)

Chairman Campbell: Personally, I do not think they are admissable. I think probably they should not go in, but because I am only one of eleven, I am going to receive them subject to objection; that applies also to Exhibits 62 and 64. [fol. 772] (Tr. 932.) We will receive them subject to the objections that are made and if parties desire, they may urge those objections on brief and insist upon a ruling from the Commission. I believe that they are not admissible but other Commissioners may feel they should be received. Since they are from tariffs on file, I do not think the receipt can do much harm, so will allow them to be received except Exhibit 64. (Tr. 933-934.)

The documents offered, were received in evidence marked respectively 58 to 63, both inclusive. Witness Brown. (Tr. 934.)

The Witness (continuing): The charges referred to in Exhibits 58 to 63 inclusive are sometimes per car and sometimes per 100 pounds. Whatever elements of competition were or are bringing about these rates are not any different than they are in Chicago. They cover movements made exactly as made here; grain is switched after it has come to rest in an elevator or mill, or feed or flour or anything else.

At St. Louis is what may be called a transit proposition. Grain reaches St. Louis and may be switched for local or other delivery and the switching is absorbed and ends there. This may be done with products of grain. They may switch to East St. Louis where the toll bridge charge of the terminal railroad association is as high as 2¢ per 100 pounds, which is absorbed by the inbound carrier, thus giving transit from St. Louis to East St. Louis. (Tr. 935.) The Illinois Central, Wabash and the Chicago, Burlington & Quincy, by Tariff, I. C. C., 16848 referred to in Exhibit 58, provides for Illinois grain movement to East St. Louis and if the rate is 6½¢ per 100 pounds, or more, that grain, after reaching East St. Louis, may be switched to St. Louis and the 2¢ bridge toll is absorbed. (Tr. 935-936).

[fol. 773] All these Exhibits go to that point and all these railroads including Western and Eastern at Louisville, Cincinnati and Southern Railroads at Nashville have absorbed cross town switching that is not absorbed here. At Kansas City, outbound switching from an elevator by a road haul is as high as 2½¢ per 100 pounds, as the carrier feels it will get that much anyway and never get a further road haul; and it charges 2½¢, and if it does get a road haul it merely absorbs what it has already charged the shipper. If another competing railroad takes it out, it penalizes them by charging 2½¢. We have no cross town switching rates of 2½¢. We could not stand that. Our rates are per car which we pay and the carriers retain. (Tr. 936.) As to the reasonableness of this, taking transportation maintained at East St. Louis and St. Louis, it is switched across the river for 2¢, which is absorbed. This grain may reach St. Louis from the Missouri River, pay the regular rate of 13½¢ on wheat and 12¢ on coarse grain and thence shipped to Chicago, an additional 280 miles at an addition of 4¢ and the switching is absorbed. There has been talk of making our single line rate 3¢ or 2 line rate 3½¢ and our 3 or more line rate 4¢. In other words, an exception is made here. They would make us pay 17½¢ plus 4¢ for exactly the same kind of service. We would have an intermediate service here and St. Louis would get an intermediate service and other services.

Mr. Davis: Just a moment. That seems to go to the rate structure on grain as a whole throughout the country.

The Witness: No it goes to the reasonableness of what you say you intend to put in.

Chairman Campbell: He says it goes to the level of the switching rates in Chicago and that is what I take it he is testifying to.

[fol. 774] Mr. Davis: He is citing the proportional rate from the Missouri River here as compared to his proportional.

Chairman Campbell: I assume we are not going to consider that proportional rate outside of the Chicago district. My understanding was the witness stated that he was making the statement because it referred to the level of rates in the Chicago district. (Tr. 938.)

The Witness (continuing): What I am trying to show, Mr. Commissioner is if you want to consider the service

from St. Louis to Chicago as a cross town service they charge no more than 4¢ in addition to the rate into St. Louis and here they want to add on from 3¢ to 4¢ for a mere cross town service to make exactly the same delivery as would be made on grain products from St. Louis.

Chairman Campbell: We will adjourn the hearing until 2 o'clock P. M. today.

At 2 o'clock P. M., the hearing reconvened.

Mr. McCornack: I would like to enter my appearance for the Chicago Gravel Co., Walter E. McCornack, 1258 First National Bank Bldg., Chicago and also that of L. A. Berhle, General Traffic manager of that company.

Chairman Campbell: Very well, we will hear you later, Mr. McCornack.

J. S. Brown resumed the stand and testified further.

Direct examination continued by Mr. H. J. Campbell:

In some respects, cross town switching in Chicago on grain and grain products is similar to transit. At Western Lake ports like Duluth and Chicago, when grain comes to rest in elevators in those markets, it is on an even basis [fol. 775] so far as Lake transportation is concerned. (Tr. 939.) Duluth gets most of its grain from the Northwest, while we get more of ours from the Central West and Southwest, though some of the latter for which we compete, finds its way to Duluth either in the shape of flour or as wheat. In the Kansas City Board of Trade case and other Southwestern markets, the Commission established from Kansas City to Duluth, a rate but 1½¢ higher to Duluth than Minneapolis, expressly providing milling in transit at Minneapolis. This made an intermediate service at Minneapolis for the transformation of grain into flour with an additional 150 mile movement for 1½¢ per 100 pounds. It may move either as wheat or flour. That situation is substantially ours, where grain going into one elevator or a mill and the products or the grain moves to a lake elevator, where they want to charge us for a single line haul 3¢, for a haul of two or three miles.

In ex parte 70, the Commission, just before Federal control ceased, fixed the same rate from Omaha to Duluth as from Omaha to Chicago because the haul from Omaha to Duluth was substantially that from Omaha to Chicago though the short line distance from Omaha to Duluth was over two lines, while a short line distance from Omaha to Chicago was over a single line. (Tr. 940.) This was based solely on the question of service, assuming conditions and circumstances were the same to Duluth as to Chicago. The rate to Minneapolis was not changed and its rate was then and is now 1¢ less than to Duluth. Now that grain or products may move from Minneapolis to Duluth, 150 miles for 1¢, the only difference is that Minneapolis is farther from the lake than some of our elevators here. (Tr. 941.)

[fol. 776] If rates are made under that theory no two cities and no two industries in the same city would be on equality, because of differing costs over the differing routes or roads. The long line has always been required to meet the rates of the short line, sometimes by a distance 30, 40 or 50 per cent greater than the short line. Basing rates on cost would not permit that competition. Dealing with grain and the effect rates have on its price, rates must equalize as far as possible, not only in the same city, but as between cities and markets. (Tr. 941.)

Examiner Faul asked Mr. Haines why grain should not be on the Lowrey basis. Grain is not grown in Chicago. It comes here and until disposed of is part of the visible supply considered by the Government in its calculations and by the speculator, who is the chief factor in making future prices. Switching cost in Chicago cannot be considered alone. Consideration must be given to the entire cost of moving grain from origin point to port from which exported, or to point where consumed. From the beginning grain switching charges here have differed from those on other traffic, and those differences existed when the Lowrey agreement was made and the existence of lower switching rates on grain than on other commodities was not changed by the Lowrey agreement.

Examiner Faul: Mr. Brown, does the all-commodity basis apply in these other switching districts? (Tr. 942.)

The Witness: No, sir. They differ in many respects from switching charges on other freight, although they

have an all-commodity basis on other than grain in those districts. Connecting-line switching charges in other cities may about equal grain, but usually is higher, as in Minneapolis, where the reciprocal rate on grain is $1.80 per car, and crosstown movement $2.25 per car. Other freight will be higher than that. The practices here, and the reason for crosstown switching, are just the same as at these other [fol. 777] cities I have mentioned, considering Western cities only. And there is no charge to the shipper. It is absorbed. Our charge is not absorbed, and to that extent we are discriminated against and pay more for the same through service from point of origin to destination than our competitors pay. (Tr. 943.)

We feel in this general investigation the Commission should consider this discrimination against us, especially when dealing with practices here as against practices in other places relating to dealers, millers, maltsters and feed manufacturers engaged in the same business. It is not coal versus grain, but grain versus grain and grain products versus grain products. Though we have discussed absorption of crosstown switching at other points, all we ask now is that you let our rates alone. Although we are entitled to reductions if we can get them, what I mean at this time is that our rates should not be increased. If our rates are increased then the grain dealer and the miller in Chicago must be treated as they are elsewhere and crosstown switching here should be absorbed. On Saturday last it was announced that the terminal railroad at St. Louis had reduced its rates 10 per cent on some classes and 40 per cent on others, effective June 28th, claiming several million dollars saving annually to the shippers. (Tr. 944.) That is being done at St. Louis as against Chicago, but I do not know the commodities that reduction covers.

The proposed increases here started on iron and steel, and then the carriers brought in other commodities to bolster up their claims for iron and steel increases, and now they bring in grain to bolster up their claims for increases on the other commodities, to try and justify their rates under suspension. (Tr. 945.) I will stand on what I have said.

In his direct testimony Mr. Galligan did not mention bringing these other single-line exceptions up to the sus- [fol. 778] pended Lowrey basis. That first appeared in his

cross-examination. Grain rates are single-line rates. But the increases proposed would require us to pay two-line or three-line rates wherever that number of lines might be used. (Tr. 946.) At the request of the Board of Trade some of the elevators here have placed orders for empty cars for loading with the line serving the elevator, whether a switching or a road-haul carrier, regardless of whether or not the road-haul carrier might get a switch movement instead of a road haul.

It often happens that cars to the elevators, after unloading, will be coopered and hauled away empty, and other empties supplied to take their place. In a city the size of Chicago, if transportation costs are as claimed, regardless of American Railway Association rules, there should be some modification preventing carriers hauling away coopered empties and supplying new empties requiring cooperage, when the coopered empties are already at the elevator. Damaged grain doors could be replaced while the cars move from the unloading side to the loading side of the elevator.

In dealing with road-haul rates and the increase in minimum rates, I represent both the Chicago Board of Trade and Chicago Shippers Conference Association. (Tr. 947.) Supplement 8 to Galligan's I. C. C. 84, page 20, contains the vital part of the Lowrey agreement made in 1911, as it affects the flat Chicago rate to and from all industries in the district listed in Galligan's I. C. C. 108. The road-haul Lowrey agreement basis is in Galligan's I. C. C. 98, which provides minimum rate of 3 cents per 100 pounds, with minimum per car charge $19.00, out of which industrial and intermediate switching, if any, will be absorbed. The $19.00 charge is less than the two-line switching charge proposed of $21.00, or the three-line of $24.00, and in addition certain industries on the north and west sides, as shown by Mr. Haines, will be charged ½ cent more than the cross- [fol. 779] town switching rates. (Tr. 984.) The industries referred to today pay ½ cent above the present rates, which means $21.00 per car, though the present Lowrey basis for the road-haul for such deliveries is $19.00. In the tariffs suspended there are four railroads which provide for a minimum rate of 4½ cents, a minimum per car charge of $27.00, as against the minimum rate of 4 cents and minimum per car charge of $24.00 for all other rail-

roads. The four railroads which proposed these higher rates are the ones now charging the ½ cent-plus on crosstown movements to the north and to the west sides.

In 1923 we voluntarily offered the carriers a minimum rate of 3½ cents per hundred pounds, or ½ cent increase over the rate today, and to increase the $19.00 minimum car charge to $24.00, but they did not accept it. Prior to 1923 this matter had been discussed between shippers and railroads, and claim made that the $19.00 minimum car charge was rather low to permit industry switching absorption. (Tr. 949.) We agree that perhaps they were entitled to a little more money, and we would give $24.00 per car provided that charge included all industries in the Chicago district. In making this offer, if accepted, we thought the present single-line minimum charge of $15.00 would not be increased for road-haul, and no increase in crosstown switching, with a possible reduction of minimum from 60,000 pounds to 50,000 pounds. Some carriers, who charged the higher switching, were dissatisfied with the Lowrey basis because the amount they paid was based on 60,000 pounds, but freight charges they collected for road haul were on minimum weights less than that. (Tr. 950.) We thought we made a fair offer, but I do not think it was even considered.

These industries on the north side where the general switching rates in the district are plussed ½ cent, are shown in the Lowrey tariff by a prefix circle reference 3 and circle reference 36, which mean by these references that the Lowrey basis on Chicago flat rate basis will apply between those industries and points in Indiana, Ohio, Michi-
[fol. 780] gan, the Southeast, and all of Eastern territory, with a limited part of the Mississippi Valley; but freight originating in or destined to Illinois, Wisconsin, or any place in the West, the Lowrey basis does not apply. (Tr. 951.) The north side lines here under this get the full benefit of the Lowrey basis, the competitive base on the great big traffic and on south side, but they refused to reciprocate and open up their industries on the north side to their Western competitors.

If the Commission sustains the increased basis in the suspended supplements I. C. C. 84, we ask that it disallow the $27.00 minimum charge and the 4½ cents, and that it open up these north side industries on the Lowrey basis,

as was originally intended and as we requested or suggested when we offered the $24.00 minimum. (Tr. 952.) This would be fair to the shippers and to the other railroads, parties to the Lowrey basis. A route sheet of the Belt Railway on a cross town movement shows car moved empty by the Rock Island, back to the Chicago, Burlington & Quincy, through 12th St., and across the air line at a set up cost of $7.70. (Tr. 952.) The Belt Railways' individual charge for handling empties is $3.15 and the use of that road on this movement would have saved the Rock Island some money.

Exhibit 62 shows cross town absorption at places remote from Chicago and on carriers not reaching Chicago, such as Little Rock, Arkansas and the Missouri Pacific Railroad, for example. These references in the Exhibit are not to show that these non-servicing lines discriminate against Chicago, but to show the universal practice at other places in the event our alternative basis is approved; that is, if you permit increased charges that you will order the cross town switching absorbed. (Tr. 953.)

In the Exhibit you will find interior milling points in Kansas and Oklahoma competing with Kansas City, having their cross town switching absorbed. (Tr. 953.)

[fol. 781] Exhibits 58 to 63 were put in for the purpose of showing what we consider the reasonableness of the present rates. Reasonable to carriers because they keep what they collect and because if there is the same or less switching charge at some other place and it is absorbed, then all our charges, whatever they may be, are unreasonable to the extent that they are more than nothing. They were offered to show the propriety of the present rates and we ask that they either be let alone or that they absorb our cross town switching. (Tr. 954.) Cross town switching is the only traffic involved here which is switching between two industries within the Chicago district and Lowrey basis 20, which I speak of is also involved.

Cross-examination.

By Mr. Davis:

I did not say we did not object to placing grain on the Lowrey basis providing the carriers absorbed it. My statement was, if rates were to be increased then we

wanted carriers to absorb the switching, I think it silly to talk about putting grain on the Lowrey basis. On the North side in your own district, you would have a rate for a 3 line haul of 3½¢ or ½¢ less than the haul between here and Milwaukee. Even if absorbed by you, it is unreasonable. Grain destined to Chicago is held at some yard and samples taken to the Board of Trade where the grain is bought on sample and after purchased, the consignee gives order for destination delivery in Chicago, and it moves on the flat Chicago rate. (Tr. 955.) If the purchaser or if someone else later wants to move that car of grain across town to some other industry, the cross town switching charge I have been talking about will apply and is the charge I said should not be increased. (Tr. 956.) That shipment is still in the channels of trade as far as the grain business is concerned being considered in the visible [fol. 782] supply and has its effect on future prices. It is an independent movement and for that reason, I have never been willing to ask you to absorb it even though we knew you were doing it at other places.

Coal may be said to be not in the channel of commerce as grain is. The former is not given transit and grain is. The question is not as to what is done with other commodities, but what is done with grain generally at other places, and is the point that interests us. Crosstown switching is an independent movement but not disconnected from the fact that there was a prior road haul, with the possibility of an additional road haul, although there may not be one out of the Chicago district. (Tr. 957.) There might be from Buffalo on grain, for example. It may go out by water, and there is where we ask transit up to the lake elevators, just as transit is given from East St. Louis to St. Louis, and vice versa. If the charges are increased we want the inbound rate to put grain to the lake elevator, if it first goes to an inland elevator.

In my answer to Examiner Faul I meant that the other places had switching charges on grain different than on other commodities. (Tr. 958.) At St. Louis they have pretty much an all-commodity basis on 100-pound rates for transfer across the river, but did not mean there was just one rate in there on all commodities in these other cities. These other cities to some extent have a different rate on different commodities. I made reference to rout-

ing of empty cars back to the owning road, using the return by the Rock Island of a Chicago, Burlington & Quincy empty. I never could understand the economy of routing cars to the home road, because there is none. (Tr. 959.) I do not believe the owning road should have its cars returned to it at all times, when it sometimes induces the shipper to load its cars so that the carrier can get per [fol. 783] diem on them, which has been done in the Chicago district within one year. The road I do not care to name, but that practice does not go to every day in the year. (Tr. 960.)

But I mean there are times when grain and other commodities are loaded on Western railroads to go east, although contrary to American Railway Association rules, but the Western lines are willing to have these cars so loaded, as they have plenty of time and will obtain per diem on them while the car is off their roads. It is not my contention that a Chicago, Burlington & Quincy car unloaded at an industry should not be used by the shipper for a movement to New York, but we contend that a grain car already unloaded and coopered could be used again without the expense of switching the empty out. (Tr. 961.) That car ought to be loaded to run east. I said when Western cars are sent east it is contrary to American Railway Association rules, but do not criticise the Western road that lets its cars be loaded to points on other lines, but do not like to have you set up those costs for moving empties back when the shipper would load them if you permitted him to do so. (Tr. 962.)

Cross-examination.

By Mr. Connell:

For the $3.60 rate the New York Central delivers cars into the elevators that it receives from connecting lines; a switch from the connection to the elevator. The length of haul depends on where it gets the cars. It is as high as it ought to be, though outbound it charges more. It gets whatever outbound movement comes from grain out of your Indiana Harbor elevator that goes to another elevator; a switching movement. All rail movement of grain from Chicago eastbound varies with the seasons. (Tr. 963.) Some years it has been as high as 89 per cent, and within

recent years. Some years not over 60 per cent. I could [fol. 784] not give you the percentages last year or the year before that. I do not know them. Export grain moving eastbound from Chicago all-rail last year was mighty little; probably less than 3,000 cars, because the rates were higher than a cat's back and nobody could possibly ship all-rail for export and compete with foreign countries, and it was cheaper not only by water but all water to Montreal.

Any grain the New York Central brings in, going to an inland elevator, and from there to a lake elevator, would give a crosstown movement, which we ask you to absorb if the charges are increased. On a movement from a Western line to an elevator on the New York Central, if it gets the eastbound haul, we ask it to do what is done elsewhere, absorb the crosstown switching. That would not go out by water because the New York Central elevator is not on the water. The Baltimore & Ohio does not have an elevator, but the Pennsylvania has some good ones. (Tr. 965.) We would not ask for the movement of grain from the Milwaukee elevator to the Pennsylvania elevator and then ship by water. On such a movement however, they would get their switching revenue and that is all and would not ask its absorption by the Pennsylvania. We would ask the St. Paul if it brought the grain here, to absorb the switching to the Lake elevator. The Pennsylvania Railroad could publish low switching rates to their elevators because there is some grain switched and that goes all rail. The instance regarding the Norris grain company as to its soft corn which must be dried and cited by me; illustrates this situation. (Tr. 966.) The Columbia Malting Co., for instance, will dry the grain and it is then switched to the Norris plant and goes out over the Pennsylvania and some of it over the New York Central. It is not the possibility that the Pennsylvania will get this out bound haul that would induce it to publish low inbound switching rates, but the [fol. 785] actual getting of it is the inducement. It would not get any movement if the grain moved out by water.

Examiner Faul: Mr. Brown, does the Chicago Board of Trade favor the all commodity basis on commodities other than grain?

The Witness: The Chicago Board of Trade was one of the three parties signing the original Lowrey agreement

and no one knew then that a war would occur three years later that would put those charges up. It was all right then and it is all right now, provided it is not made so burdensome that it cannot be worked; (Tr. 967.) but there always were exceptions to it and it is proper that there should be exceptions to it on single line hauls but if it is going to be made so high that it is not workable, then I would not be for it.

Examiner Faul: Well, what are the exceptions that you refer to, Mr. Brown; on any particular commodities?

The Witness: Well, I could not say all of them offhand. Grain and grain screenings are and always have been notable exceptions, as well as single line hauls on stone, pig iron and things like that. There were good reasons for those exceptions which still stand and still more if the general Lowrey basis is to be increased. That will bring about more exceptions. The railroads would voluntarily make exceptions rather than kill off cross town switching which would kill off road haul as well. (Tr. 968.) As to zoning, a study of Mr. Haynes' map indicates it is an impossible thing. (Tr. 968.) The action of the North side lines in setting off certain territory, with higher switching rates, is zoning in a sense; but dividing the whole Chicago Switching District into zones and say one rate shall apply in a zone regardless of the number of lines is impossible [fol. 786] because of the way the railroads run. Take the car Mr. Oliver showed around through Clearing and back through Blue Island. That would pass through all zones there would be, but it should have gone down the West side of Calumet River and through Calumet City, back to Roby.

Chairman Campbell: But if it had been zoned, it probably would not have moved that way.

Examiner Faul: It would probably result in more direct hauling, would it not?

The Witness: Oh, if it was put in, it would result in more trackage arrangements being made. (Tr. 969.) There is no one talking about zoning unless it is someone who has got a selfish interest in it.

Cross-examination.

By Mr. Shank:

I said if they have an exception today on pig iron, there must be a very good reason for it and a still greater one

if the general basis is put up. There is no exception made in the case of pig iron that would not apply to brick. There should be an exception on brick also. There never was a water tight Lowrey agreement and it cannot be made so by increasing rates. The exceptions are all single line ones. (Tr. 970.)

J. W. BROWN recalled as a witness.

Direct examination.

By Mr. Keene:

The Graselli Chemical Co., at East Chicago, owns and operates approximately 20 miles of tracks at its plant there, of 80 pound steel and a value, less depreciation, of approximately $200,000.00. We have always maintained and paid all expenses incident to the maintenance of that track. There are 3 producers of sulphuric acid in the Chicago Dis- [fol. 787] trict. One is our company at Graselli, Indiana; the others are General Chemical Co., at Hegewisch on the outskirts of South Chicago and the Central Chemical Co., at Hammond, Indiana; (Tr. 972) and all located on the Indiana Harbor Belt, in the Calumet District. Tank cars used by our company in handling sulphuric acid are used to a great extent in switching service only. Many of our cars move back and forth in switching service from the time they are built until they are scrapped without earning more than a few cents in mileage during the actual life of the car. Sulphuric acid is such a cheap commodity that we have practically no long hauls and when used in road haul service they travel a comparatively short distance. (Tr. 973.)

Cross-examination.

By Mr. Davis:

Have been with the Graselli Co., 5 years and it is about the same size now as when I entered its employ. We have about 20 miles of track within the plant. (Tr. 974.)

Cross-examination.

By Mr. Barse:

These tracks were originally laid some years ago and new ones added as time went on and the old ones replaced.

In the last few years, we covered the whole plant and relaid the rail with 80 pound steel. (Tr. 974.) It was done gradually as our force could get to it and completed about a year ago. I cannot say the length of time it took to relay the tracks with the new steel. The $200,000 value I stated represents the value as of today. I do not have the cost of the original tracks. (Tr. 975.)

[fol. 788] L. A. BEHRLE, called in behalf of Chicago Gravel Company, was sworn and testified as follows:

Direct examination.

By Mr. McCornack:

Am general traffic manager Chicago Gravel Company, and prior thereto was assistant general freight agent of the Chicago & Alton Railroad. I have heard the testimony of the Chicago crushed stone shippers in this case, and have prepared some testimony in rebuttal to that given by them. Mr. W. J. Womer on direct examination testified briefly to different operations entering into the production of crushed stone and sand and gravel. He recited all of the preliminary steps with reference to the production of crushed stone and some as to gravel, but did not mention that gravel in a large measure requires crushing. (Tr. 978.)

With reference to rail shipments of stone by the Consumers Company within the district in 1926, they exceeded the shipments of 1925 by 10 per cent, but their sand and gravel shipments increased 24 per cent. Without separating sand and gravel these figures have not much value. They may be explained by the readjustment ordered by the Commission in 118 I. C. C. 633, and by Illinois Commerce Commission Increase 15878, which made comparatively slight changes in the rates from the Consumers Company sand and gravel pits, whereas substantial increases were made in the rates from our pits in the Joliet district on the E. J. & E. Prior to the revision under 118 I. C. C. 633 rates for single and joint line hauls to points within the Chicago district were from Algonquin, Illinois, 60 cents and 90 cents respectively; from Ginger Hill, Indiana, 69 cents and 88 cents respectively; and from South Beloit, Illinois, 65 cents and 95 cents respectively, applying to a ton of 2000 pounds.

[fol. 789] Under the revision the rate from Algonquin was 65 cents and 85 cents respectively; from Ginger Hill 70 and 90 cents respectively; and from South Beloit 70 and 90 cents respectively. (Tr. 980.)

Prior to the revision the rates from Plainfield were 50 cents and 85 cents respectively. Under the revision the rates from the three points were made 65 and 85 cents respectively. Maynard's Exs. 36 and 37 show that these changes affected the movement of stone within the district, because the entire movement of stone by all the companies named therein was, in 1926, 42,238 cars, and in 1925, 42,366 cars, or a decrease of 128 cars; while shipments made within the district in 1925 were 23,855 and in 1926 they were 27,216. They show, in 1925, that 56.3 per cent of all shipments moved to points within the district, while in 1926 64.43 per cent of the entire movement was to points within the district.

The Indiana Harbor Belt published a 40-cent rate on stone for intrastate movements between points on its line within the district, while its rate on traffic generally is 50 cents. (Tariff No. 325-F, I. C. C. 728, Illinois Commerce Commission 222.)

Chicago & Eastern Illinois, in its tariff No. 500-B, I. C. C. 167, Illinois Commerce Commission 135, publishes a stone rate from Thornton, Illinois, to industries served by it within the district of 40 cents, while its rate on commodities generally is 50 cents. (Tr. 981.)

Maynard's Ex. 37, page 1, shows ¾ of 1 per cent of Dolese & Shepard's shipments from McCook, Illinois, to the Chicago district were three-line shipments. This percentage may represent shipments upon which the three-line basis was applied, and not to shipments actually moving over the rails of three or more carriers.

Chicago & Illinois Western Tariff 520-D, I. C. C. 118-A, Illinois Commerce Commission 112-A, shows it has direct [fol. 790] connection with the Atchison, Topeka & Santa Fe, Baltimore & Ohio Chicago Terminal, and Indiana Harbor Belt at McCook; with the Belt, the Chicago, Burlington & Quincy; Illinois Central; and Manufacturers Junction at Hawthorne; with the Illinois Northern; Pennsylvania Railroad; Chicago Junction; Chicago River & Indiana at Western Avenue; and that it connects from an intermediate carrier with the following lines: Baltimore & Ohio; Chesapeake & Ohio of Indiana; Chicago & Alton;

Chicago & Calumet River; Chicago & Eastern Illinois; Chicago & Erie; Chicago & North Western; Chicago & Western Indiana; Chicago, Aurora & Elgin; Chicago Great Western; Chicago, Indianapolis & Louisville; C. I. & S.; Chicago, Milwaukee, St. Paul & Pacific; Chicago, Rock Island & Pacific; Chicago Short Line; Chicago, South Shore & South Bend; Chicago, West Pullman & Southern; Cleveland, Cincinnati, Chicago & St. Louis; Elgin, Joliet & Eastern; Erie; Grand Trunk; Michigan Central; Soo Line; New York Central; New York, Chicago & St. Louis; Pere Marquette; Pullman; and Wabash. (Tr. 982-983.)

Shipments of crushed stone in Ex. 37 moving to the district from McCook are not divided among the shippers from McCook; but the total of shipments of the Baltimore & Ohio, the Chicago & Alton, Chicago & Calumet River, Chicago, Indianapolis & Louisville, the Chicago, Milwaukee & St. Paul, the Chicago & North Western, Chicago & Western Indiana, the Erie Railroad, Grand Trunk, Michigan Central, Soo Line, New York Central, the New York, Chicago & St. Louis, and Wabash lines (with which the Chicago & Illinois Western does not connect directly, but to the industries located thereon to which the two-line basis of rates is applied under the provisions of Galligan's I. C. C. 63), is 5,392 cars. Deducting this from total of all two-line shipments by other producers at McCook, namely 8859 cars, which I determined by applying percentages to the total number of district cars indicated on page 1 of the exhibit, we find that Dolese & Shepard must have shipped at least [fol. 791] 1533 cars which moved over three lines, instead of 63, which is ¾ of 1 per cent of 8401 cars. (Tr. 983.)

Tariff I. C. C. 89, under suspension, proposes to continue the two-line basis of rates from industries on the Chicago & Illinois Western to these lines with which it does not have direct track connection, but with which it interchanges traffic through an intermediate carrier.

Mr. Womer states that the district quarries are located along the outer rim of the Chicago district. It would be fair to say that with one exception the boundary line of the Chicago district was run around the quarries, rather than that the quarries happened to be within the line. (Tr. 984.) The map, Ex. 6, shows the boundary line has been run from the line of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt so as to embrace the entire line of

the Chicago & Illinois Western. Practically all freight originating in that section is stone, and the railroad referred to on Ex. 6 is the Chicago & Illinois Western, which hauls mostly crushed stone. (Tr. 985.)

By referring to Ex. 6 it appears that the Brownell quarry is not located within the Chicago switching district. Taking Harvey, on the south central part of the map, you will find the Baltimore & Ohio Chicago Terminal leaves the confines of the district just southeast of there, and then runs south, and from a spur it serves the Brownell quarry outside the district. This quarry is shown as located at Thornton by Mr. Womer's and Mr. Maynard's exhibits. (Tr. 986.) Baltimore & Ohio Chicago Terminal Tariff, I. C. C., 145, and Galligan's Industry Directory, I. C. C., 47, Illinois Commerce Commission 108, lists Brownell Quarry as located at Harvey and according to Baltimore & Ohio Chicago Terminal Tariff, I. C. C., 311, is four miles from Harvey, that is, the Brownell quarry is at Thornton, 4 miles from [fol. 792] Harvey. It is because these shipments are billed via the Baltimore & Ohio Chicago Terminal as from Harvey although originating at Thornton that causes application of the Lowrey agreement rates from Brownell quarry at Thornton to points within the district. The rate from Thornton to Chicago District is 50¢ (Tr. 987) and generally speaking, shipments Southbound from Thornton take the Chicago rate, but there are instances where Thornton rates Southbound are less than the Chicago rates; some lines carry them on the same basis as Lehigh going South. The purpose of my testimony was first to clear up the record as I thought it should be and because this is a general investigation, the Commission should know all these exceptions made within the District. It is not to be understood, however, that I think these irregular treatments are wrong but they demonstrate to my mind that the Chicago stone dealers have been given what we are asking from Joliet—a parity of rates for the Chicago District. (Tr. 988.)

Cross-examination.

By Mr. Womer:

I do not regard the plant of the Chicago Gravel Co., as typical of those in zones 1, 2 and 3. While with the Chicago

& Alton Railroad, we served one of those plants and a similar one at Joliet and I gained a good idea of the difference in the gravel plants. In the operation of gravel plants, I have had no more experience than you have had. The Chicago Gravel Co., has 4 plants. I think the pits of the Consumers Co., have been given a very preferential basis of rates located in the same zones with other pits; (Tr. 989.) From their pit at Ginger Hill, and the one at South Beloit. Ginger Hill is in zone 2 and I believe you are 90 miles out, with a rate of 70¢ single lines and 90¢ for a joint line. Ginger Hill has a zone 2 basis of rates, South Beloit is in the same zone and has no different rate than any other pit in zone 2. I may have misunderstood you and I do not [fol. 793] want to leave the impression that the Consumer Company's pits are treated any differently than like pits in zone 2. (Tr. 990.) The Dolese & Shepard quarry is on the Chicago, Illinois Western. I could not say that it is closer to the intersection of the Indiana Harbor Belt and the Atchison, Topeka & Santa Fe, as shown on exhibit 15 than it is to Gary, Illinois. It might be closer to the intersection than to the station shown at Gary and if you say it is, I will take your word for it, Mr. Womer.

I do not know if the Indiana Harbor Belt publishes any 40¢ rate applying locally on its line in Illinois, other than crushed stone, but generally, the rate on commodities is 50¢. (Tr. 991.) I do not know the number of exceptions there are to the so called general rate. Indiana Harbor Belt Tariff 325 G. in section 2, appears to provide a rate of 2¢ per 100 on traffic subject to column 1 and 2¢ on traffic subject to column 2 between stations index No. 1 to 22 inclusive, minimum weight 100,000 pounds. Column 1 covers traffic between stations on the Indiana Harbor Belt except as shown in column 2. Column 2 applies on traffic on the Indiana Harbor Belt and junctions with connecting lines. The rate on grain is 2¢ with reference mark. (Tr. 992.)

Redirect examination.

By Mr. McCormack:

My statement that the Indiana Harbor Belt has published a general commodity basis at 50¢ is correct. (Tr. 994.)

A. A. ADAMS, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am chairman of the traffic committee of the Chicago Retail Lumber Association and traffic manager of the Edward Hines Lumber Co., and associated interests. The Chicago Retail Lumber Dealers Association is comprised of about [fol. 794] 135 yards, operating in the Chicago Switching District and according to the Lowrey list of industries there are 258 such yards within the district. (Tr. 996.) They are somewhat scattered throughout the Chicago District as a whole. The car load movement of lumber and shingles into the Chicago District for 1926 was 224,891 cars coming largely from the head of the Lakes, the Pacific Northwest, California, the Southwest and the Southeast blanket territories. For the yards I speak for, the intra district movement is between 4,000 and 5,000 cars per year and we do approximately 75% of all the total business. (Tr. 997.) The reason there is not a greater intra district movement is because of the so called transit cars moving from all producing regions which are not sold, and have no ultimate destinations but some reach Chicago and are sold on or after their arrival.

There is quite an extensive truck movement of lumber within the district. Approximately 80% of the total; but no district movement by water. (Tr. 998.) Lumber movements within the district pay 2½¢ single line, 2½¢ for 2 line and 3¢ for 3 line per 100 pound-, minimum 60,000. (Tr. 998.) There is a plus basis of ½¢ over 3¢ to two deliveries on the North side on the Milwaukee and the Chicago & Northwestern and the West side deliveries on the Soo line and Chicago & Great Western. To points in the Southern end of the district there is one rate of 5¢ on business moving in connection with the Elgin, Joliet & Eastern to South Chicago, but it moves outside the district to get in Chicago, traveling through Kirkyard at Gary. The North side plus rates are those shown in the Haines Exhibit in the colored section of the map. If the proposed increases become effective, it will help to increase the transit car situation and likewise take up the slack, the balance in trucking of such shipments to destinations in the Chicago district; it will

reduce the volume of switched lumber. The intra terminal [fol. 795] movement in car loads is caused through the question of price and competition with the transit car and some times a demand for an assortment of lumber that can only be supplied by the local yard. (Tr. 1000.) Lumber is sold in the Chicago District on a contract basis covering deliveries over a definite future on a delivered basis and on that lumber, the lumberman would have to stand the increases if effective, until the end of his contract and the question of competition would determine whether he could pass that on in his subsequent sales.

Where cars are switched within an industry and unloaded and not reloaded, they would have to be pulled out empty but where such cars are coming in under a load are available for out bound load, it would have a tendency to reduce a part of the cost and take up some of the slack of per diem or detention charges in the Chicago District. We have some local shipments not loaded to 60,000 pounds because of the peculiar nature of lumber its different sizes will not permit the loading of box cars as fully as we would like to load and we are not able to use the cubical capacity of the car to get the 60,000 minimum. (Tr. 1001.) And then, too, the road haul cars have minima that vary. From the Pacific Coast is a cubical minimum subject to declared full visible capacity, and some where actual weight is declared. On movements from the head of the lakes and from Southern and Southwestern territories the going minimum is 34,000 pounds on lumber in any size cars.

A list of 258 yards does not include box factories, planing mills, sash and door plants, or piling and poles, and these would be an additional movement of which I have no record. (Tr. 1002.)

[fol. 796] Cross-examination.

By Mr. Davis:

We ship a few cars in under transit in the district. Sometimes for a special job or a special grade requiring two or more cars of lumber we have that shipped from whatever point of origin to that job, depending whether it is the mill price or the Chicago price. We own a fleet of trucks which haul our lumber to both small and large jobs. (Tr. 1003.) They will handle about 5,000 feet to a truck and trailer,

and the weight depends upon class of lumber. Lumber weighs from 2 to 3 pounds per board foot. At 2 pounds the 5,000 feet would be 10,000 pounds, and 3 pounds 15,000 pounds. It would run around 5 tons. Two men operate the truck. It would take approximately 6 trucks to haul the equivalent of a 60,000-pound car. (Tr. 1004.)

Redirect examination:

Generally lumber has to be unloaded from the car and then moved by truck to the job, but the movement is usually into the pile and from there by truck to the job. By moving from the pile direct we save a good part of the switching movement.

Recross-examination.

By Mr. Davis:

The truck movement is usually based upon jobs where certain lumber is required to take care of immediate needs. To a box factory and to small jobs it is shipped very hurriedly. It is a matter of time with the trucking. (Tr. 1005.) In cases where we ship lumber from our plants within the district it is not always because we can do it cheaper than by truck. Due to the peculiar nature of the lumber business there are instances where certain items can be delivered cheaper than others, by truck, than they can all car, and others cheaper by car than by truck. We can ship to the Inland Steel Company cheaper by car than by truck, and in the Calumet district because of the distances in-
[fol. 797] volved. (Tr. 1006.) Distances have a great deal to do with trucking cost element. We can load direct from the lumber pile on to the truck and deliver at the job, and I stated to Mr. Walter that nearly always we had to put it on the pile anyway. But there is a certain percentage loaded direct from cars in the yard. Because of the nature of the lumber you cannot always go direct to the truck. It is the assortment of the lumber in the car that may prevent unloading directly to the truck. (Tr. 1007), and there may be different items involved in each truck load going out. I do not know of any cars from our yards that we could have delivered more cheaply than by truck. The lumber interests favor the all-commodity basis in the Chi-

cago district and are satisfied with present rates. (Tr. 1008.)

R. E. RILEY was sworn and testified as follows:

Direct examination:

Am traffic director of the Chicago Brick Company and the Lake Sand Corporation. Have been engaged in railroad and industrial traffic service since 1897. The Chicago Brick Company is an Illinois corporation and since 1887 has manufactured common brick. It has a single plant in the southern extremity of Chicago, being partly in Chicago and partly in Dolton, Illinois. The billing station is Riverdale, served only by the Baltimore & Ohio Chicago Terminal. Our interest in this proceeding is the carriers' proposal to make different rates for one- and two-line hauls. At the present and for a number of years past, with but few exceptions, common brick rates for one- and two-line hauls are and have been the same from all rail shipping plants in the Chicago district, and the industry has adjusted itself to that basis and will be best served by a con- [fol. 798] tinuance of it. (Tr. 1009.) It placed all producers on a parity of rates, affording consuming interests numerous sources of supply. The Chicago Brick Company, with 6 others, constitute the Chicago Brick Exchange, which membership includes all but one of the common brick manufacturers operating plants in the Chicago district. Our company in 1927 burnt 73,077,000 brick. Forty-six per cent was delivered to the railroads and 54 per cent was trucked direct from kiln to job. Very little brick is used by the industries listed as such in Galligan's directory. It is mostly consigned to outlying team tracks and trucked therefrom to the job under construction. Truck deliveries run from 10 to 15 miles. We employ contract trucks of about 16,000 pounds capacity.

In the test period August 4 to 10, 1927, we shipped 26 cars to points in the Chicago district, 18 being joint-line hauls and 8 for deliveries made by the Baltimore & Ohio Chicago Terminal. We shipped 104 cars September, 1927, 69 of which were joint-line hauls and 35 single-line. (Tr. 1010.) If higher rates on two-line than on single-line hauls are permitted on lines other than the Baltimore & Ohio

Chicago Terminal, we will be at 10 cents per ton or 20 cents per thousand brick, disadvantage on our shipments, compared with producers having plants on other lines on which we now have customers.

Oliver's Ex. 13, page 17, shows brick moving from Chicago Brick Company to Reiner Material Company on the Pennsylvania Railroad. In 1927 we shipped to this particular location approximately 550 cars.

The Illinois Brick Company has a plant located at Bernice, also outside of the Chicago district, but with a 2½ cent rate for single-line deliveries on the Pennsylvania Railroad. If the proposed rates become effective Bernice will have 3 cents to the Reiner Material Company, while our rate for a two-line haul will be 3½ cents. We cannot [fol. 799] afford to lose such valuable business, and if the increased rates become effective we will substitute truck service for rail carriers. (Tr. 1011.) Based on 27 rail shipments, truck substitution would affect at least 1150 cars. Average car loading of 35 tons at 50 cents means revenue loss of $17.50 per car, or annual loss of $20,125.00 on the business that will move by truck. Some members of the brick exchange have 100 per cent truck delivery, and at present the differential between all-truck delivery and rail-and-truck delivery is very small. If rail rates are increased the companies now using the rail service may be compelled to substitute truck service entirely; and if this is true with respect to common brick, it would more likely follow with higher-value commodities, because they can afford higher trucking costs.

A company on the west side in which I am interested imports burlap and manufactures textile containers, and has a cartage contract which figures $2.00 per ton for deliveries all over the Chicago district, regardless of distance. (Tr. 1012.) We have quite a business at Hammond and Gary, Indiana, delivered at the rate stated. Retail companies in the Chicago district have free delivery service extending in a radius of approximately 40 miles from Chicago. These conditions indicate that Chicago switching district rates are probably as high as they can go, and if increased, loss in revenue through truck substitution will necessitate still further increases on the remaining switching traffic. As to extension of Chicago switching district limits, we feel that this has even now been over-

done. Existing plants in the district are adequately equipped to supply the demands of the city and its environs, and we see no reason to accord brick manufacturers at outside points rates even remotely associated or identified with the switching rates.

Cross-examination.

By Mr. Walters:

The members of the Chicago Brick Exchange are in har- [fol. 800] mony with the existing basis, and have never made complaint as to existing rate structure in the Chicago district. (Tr. 1013.)

Cross-examination.

By Mr. Davis:

We feel there should be no relation between rates within the district and those without. I wish to adopt for our company and the Chicago Brick Exchange the testimony of Mr. Brown regarding the physical features of operation, but as stated by him, we do not load around 100,000 pounds because the Baltimore & Ohio Chicago Terminal is supplied with cars by the parent company which have a capacity of 60,000 pounds, our average loading being something less than 70,000 pounds. We have two men on the contract trucks. It would take about 5 or 6 trucks to haul the equivalent of a carload of brick. (Tr. 1014.) The men on the truck are paid $7.50 each per day. As I stated, very little brick is consumed at any of the locations listed in the Lowrey tariff. The construction is usually away from those, which necessitates team track deliveries, if available, and truck service from that point. (Tr. 1015.) It may be the job is located 5 miles from the team track and 15 miles from the kiln, and the initial expense is not materially different whether we send a truck 5 miles or 15. We do not always ship by truck where it is cheaper than handling in carloads. There are circumstances which necessitate a delivery of great quantities of brick at a particular location, which may only be accomplished by car service. That is one consideration which may influence rail shipments. In fact, we are now shipping 46 per cent of our business by rail, while certain other members of the

exchange are using 100 per cent truck service. (Tr. 1016.) From an economy standpoint my conjecture is that if the increases become effective the truck movement will become 100 per cent, because it is 100 per cent with respect to certain members of the Brick Exchange.

[fol. 801] Cross-examination.

By Mr. McCornack:

We have competitors outside of the Chicago district, the Illinois Brick Company plant at Bernice. It is possible that we have the same rates outbound as Bernice. It would not be proper to relate our rates to Bernice on outbound shipments if it is not related to ours on inbound shipments. (Tr. 1017.)

Cross-examination.

By Mr. Shank:

The National Brick Company is not a member of the Chicago Brick Exchange. The two plants using 100 per cent truck delivery at this time are supporting the position of the Chicago Brick Exchange that I am taking here, regardless of the fact that they are on a 100 per cent truck-movement basis, because that is a transitory condition, as one of them is now building a rail shipping yard. (Tr. 1018.) That does not affect the present situation of the two companies, but it shows what a man may have in the back of his head. (Tr. 1019.)

The Lake Sand Corporation is an Illinois Corporation which, since 1923, has produced and distributed Lake sand. Its principal equipment is the steamship Gilbert, a centrifugal dredge of 1,108 gross tonnage. During navigation, its potential production is approximately 400,000 cubic yards of sand, the production in 1927 being 350,000 cubic yards of sand used principally in building and paving operations. (Tr. 1019.) The Company maintains a material yard at 3116 N. Campbell Ave., another on the South branch of the Chicago River, 2501 S. Ashland Ave., and a 3rd at 95th St., and the Calumet River, in South Chicago; the latter being the only one making rail shipments through the Ashland Ave., yard has rail connections with the Chicago, Burlington & Quincy Railroad, over which ship-

ments could be made. From zone 1 points, the sand rate [fol. 802] into the Chicago District is 65¢ per net ton single line hauls. Sand suitable for building and paving operations is produced on practically every road-haul line entering Chicago. The proposed increase in rates from our South Chicago yard requiring 2 line hauls (Tr. 1020) will compel our corporation to meet the 65¢ rate with concurrent 70¢ rate from its 95th St. yard, although producers of outside sand have been accorded a 50 mile rail haul in addition to the expensive terminal service in the Chicago district. To do this, we will have to open additional truck yards in the Chicago district which are available on the Chicago river and on the Water ways in the Calumet region. (Tr. 1021.)

The establishment of the 65¢ rate from zone 1 by the Commission may have been based on the present relative basis of rates in the district. But if so, it was a mistake, as line haul rates should not even be remotely associated with rates in the Chicago Switching District, as that would destroy the geographical advantage of Chicago industries, having substantial capital investment in the district through subnormal or abnormal rates. (Tr. 1021.)

Cross-examination.

By Mr. Atwood.

Our sand by boat is ordinarily obtained off the Indiana shore and a very considerable amount brought to our South Chicago yard for rail shipment, which goes both to the Illinois and Indiana portions of the district. That moving to Illinois points is treated as intrastate. (Tr. 1022.)

Cross-examination.

By Mr. McCornack:

Our competition with gravel, is only in this sense as the ratio of a particular job may call for 2 parts gravel, 2 parts sand and 1 part cement and the job permits a greater increase in the amount of fine aggregates used, then we do [fol. 803] compete with gravel. We ship sand out of the district and compete with producers of sand but not on the same level of rates as theirs, as our rates outside the district are probably the highest sand rates that can be

found in the United States. We compete with the Chicago Gravel Co., at Joliet and we have the same rates to Michigan City; (Tr. 1023.) and probably the same to some points on the Burlington. We do not generally have the same basis of rates as our competitors outside the district. From Joliet to Ottawa, the rate is less than from Chicago to Ottawa, a point 85 miles Southwest of Chicago. It is hardly correct to say that within a 40 or 50 mile radius from Chicago we have the same rates as our competitors. The basic rate into Chicago from a 50 mile point is 65¢ and for 100 miles, 75¢; none of our outbound rates from Chicago for such distances approximate those figures. (Tr. 1024.) Ours are considerably higher.

Examination by Mr. Walter:

We do not ship sand to Michigan City because the same kind of sand is produced off shore there that we get out of the Lake and the relation of rates to Michigan City is of no interest to us. (Tr. 1025.)

Recross-examination.

By Mr. Atwood:

A very considerable amount of our sand is suitable and used for paving work for top dressing, the surface dressing of the road, which is mixed with cement in a coarse aggregate which is what lake sands are generally used for. Out of 140,000 tons moving from South Chicago last year, 98,000 tons of this sand were used in construction work but could not say that this was all paving work or involving the use of concrete. (Tr. 1026.) Our sand is nearly 100% finer than 20 mesh and under some specifications, such [fol. 804] fine sand is not used in concrete construction work. Whether our sand competes with others in a particular use or not we think is immaterial, the main question is as to its competition in any sense. Prices demanded for outside sand materially affect those demanded in the district as a whole and as stated by Mr. Haynes, Chicago is being used as a dumping ground and we think the investment of operators in the Chicago district should be protected against outside interests. (Tr. 1027.)

Recross-examination.

By Mr. McCornack:

Approximately 90% of our sand shipments through the South Chicago yard, our only rail shipping yard, move to points in the Chicago district, 80% of them being 2 line hauls. (Tr. 1028.)

C. W. GALLIGAN, recalled as a witness, further testified as follows:

Direct examination.

By Mr. Davis:

Answering one of the questions propounded by the Chairman, which in substance asked, what exceptions, if any, the different carriers proposed to make to the present basis of rates on certain commodities, if any, and both with reference to the rates under suspension and those not under suspension but which are involved in the general investigation, (Tr. 1029.) I am authorized to say: Carriers propose to increase all switching charges between points in the Chicago district as defined in Galligan's Tariff 21 Series, to a minimum of 3¢ per single line, 3½¢ for 2 lines and 4¢ for 3 or more lines, minimum 60,000 pounds per car. All rates now higher than the general basis to be advanced in the same amounts as proposed in the general adjustment. Arbitraries now existing above the general basis will be continued in connection with the carriers' proposals. Rail-[fol. 805] way equipment rates in the Chicago district now existing on the per car basis are to be increased relatively with the increase in the general basis. The exceptions to the foregoing are: The Illinois Central desires to continue two exceptions, one on tar and the other on refuse materials; the position of that road will be definitely stated by its representative, together with the rates it desires to continue on these low grade commodities and the refuse materials. (Tr. 1030.) And there is one exception in the case of the Chicago Junction shown on page 14, which it will possibly want to continue and if so, its representative will so state. In response to the request of the Chairman, sup-

plemented by that of Examiner Faul, I have prepared a statement of all the exceptions to be made to the general basis in the I. & S. proceedings involved here together with a statement with what we proposed to do with the rates under the general investigation docket, which is Exhibit 64 offered and received in evidence, marked "Exhibit 64, Witness Galligan." (Tr. 1031-1032.) There are one or two corrections that I want to make in that Exhibit, page 14, item 415, reading "all commodities 60,000 pounds from all Chicago Junction stations to all Chicago Junction stations, 2½¢ per 100 pounds" should carry the note "except between locations in a single district (intra-district) in railroad cars $7.15 per car, in private cars $3.15." We do not propose under I. & S. Docket 2900 to increase the Chicago Junction single line rate. The Exhibit is made to show the exceptions to the general basis now in effect and whether or not it was proposed to change that under the I. & S. Docket. The general statement I read a few moments ago was in response to the request from Commissioner Campbell for a complete statement of the carriers' [fol. 806] proposal in this case which includes the general investigation and under the general investigation the statement covers all roads unless they except thereto such as the Illinois Central or those who will make an exception. (Tr. 1033.)

Page 15 of Ex. 64, item 435, in the second bracket, reading: "To stations on Chicago Junction, $4.50 per car," should carry an exception reading: "Between locations in a single district, $3.15 per car."

I have no recollection of saying if the shipping rates within the district as presently proposed for the one-, two- and three- or four-line hauls became effective, that the carriers on the north side would wipe out the plus charge, and I have no authority to make such statement, nor do I recall that I ever wrote a letter to that effect. (Tr. 1034.)

Cross-examination.

By Mr. Behrle:

As to item 1020 on page 37, we show there is to be no change in the rate on crushed stone from stations on the Chicago & Illinois Western to points on the Atchison, Topeka & Santa Fe, the Baltimore & Ohio, the Indiana Har-

bor Belt, etc., but that exhibit was offered to show exceptions to the rates in the district now in effect and what was contemplated in connection with I. & S. Docket No. 2900; but the general statement deals entirely with the general investigation docket, and under that we propose a change unless individual lines make exception thereto. (Tr. 1035.) In the tariffs under suspension the rate shown from Chicago & Illinois Western to the Santa Fe or the Baltimore & Ohio is the proportional rate to the Santa Fe. It is not "Stations on the Santa Fe." It is the proportional rate to the junction.

Cross-examination.

By J. S. Brown:

In the general investigation it is proposed to increase [fol. 807] all items in Ex. 64 to 3 cents, 3½ cents and 4 cents per hundred pounds for the respective hauls interstate and intrastate. (Tr. 1036.) On page 6 of the exhibit, item 170 reads: "Grain, applicable on traffic moving wholly within the district; grain, applicable on traffic destined to points beyond the district, proportional rate to the connecting lines," and says: "Interstate elevator to junction with connecting lines."

Q. Do I understand from that, Mr. Galligan, that the Erie Railroad, if it switches a car of grain say to the Pennsylvania or any other railroad to go east, will charge the Pennsylvania Railroad 3 cents per hundred pounds instead of $8.10 per car as it does today? (Tr. 1037.)

The Witness: This statement, it seems, I have got to explain once more; shows the present basis and what was proposed under I. & S. Docket 2900. Under that Docket no change was proposed in that rate. No rate is published and filed, and no suspension, that affects that item at all.

The general statement shows all rates within the district carried in 21 and in the individual issues will be advanced to 3 cents single-line, 3½ cents two-line, and 4 cents three or more lines, minimum 60,000 pounds. As to the item you mention, no exception was made by the Erie Railroad when they sent their man to work up these figures. (Tr. 1038.) There is nothing in this record showing proposal to change this item in I. & S. 2900, and if that is an item connected with an outbound road-haul movement it

will not be affected by the general statement within the district. My statement is intended to apply only to movements within the district, and it may be true that we have items in the exhibit in under the general investigation. (Tr. 1039.)

The meaning of the word "intradistrict" shown in item 415, page 14, Ex. 64, I do not know, but I understand that [fol. 808] the words "single district" mean down in the stockyards district, served by the Chicago Junction and divided into several districts, having per car district rates applicable between two industries in any one district, and a higher rate applicable between a point in one district and a point in another. (Tr. 1041.) It is just a small zone there and is in the nature of an intraplant proposition, as the explanation was made to me. They said it was the same as an intraplant movement, and it was not contemplated to change intraplant rates in the district.

Mr. Connell: It is practically an intraplant movement, Mr. Kean. (Tr. 1041.)

The Witness (continuing): The basis of my exhibit consists of the present as well as proposed rates in I. & S. 2900, and is supposed to be a complete statement of the exceptions to the general basis of rates now in effect in the district and what was proposed under I. & S. Docket 2900, though there may be some exceptions not checked in by the individual carrier's representative. (Tr. 1043.) I did not say if there is any commodity now taking less than the Lowrey basis and not contained in the statement, that it is not proposed to increase it. The statement made in connection with the general investigation was, "It is proposed to advance all rates to 3 cents single-line, 3½ cents two-line and 4 cents three or more lines, minimum 60,000 pounds." It is possible I may have left something out of that statement and as to which increases were proposed in I. & S. 2900. This can always happen in making a hurried check. (Tr. 1044.)

Redirect examination.

By Mr. Davis:

In offering this exhibit I speak for the roads, parties to my tariff that is under suspension. (Tr. 1045.)

Recross-examination.

By Mr. Knowlton:

Under item 175, Railway Equipment, the Erie Railroad, [fol. 809] although proposing no change in I. & S. Docket No. 2900, now proposes a proportional increase in these rates provided rates in the Chicago district are increased. In the general investigation they propose as to Railway Equipment to give the matter further consideration, and as to rates on railway equipment in the Chicago district, now stated on a per-car basis, it is proposed to increase those rates relatively with the increase in the general basis. (Tr. 1046.) The traffic officers of the Erie Railroad gave their consent to this general statement. Item 780 on page 29 was concurred in by the Indiana Harbor Belt.

Cross-examination.

By Mr. Atwood:

As to item 85 on page 3, the rates proposed there are not applicable between points in the Chicago district, and has no particular significance, as it appears to be a proportional rate. (Tr. 1047.) Note 37 of the exhibit says: "1½ cents per ton"—that is applicable in connection with shipments having origin and destination within the Chicago district. There was probably no necessity for including that item as a proportional rate to a junction point on traffic going outside of the district, and the 2½ cent present rate could not be used as a proportional in combination with some other proportional rate on cross-district business because the item says: "Not applicable on shipments having origin and destination within the Chicago district." (Tr. 1048.) Referring to rates in the column headed "present" there is no note in connection with that and can be used on cross town business and we propose to change that though not indicated in the column headed "Proposed." (Tr. 1048-1049.)

Chairman Campbell: You gentlemen have had very little time to examine this exhibit and it would perhaps satisfy you better to have that opportunity tonight then if you find [fol. 810] other matters that should be cleared up, Mr. Galligan will be here in the morning. If you have further questions in the morning, you may ask him then.